No. 397

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1939.

UNITED STATES OF AMERICA,
Appellant,

vs.

THE BORDEN COMPANY, CHARLES L. DRESSEL, HARRY M. RESER, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF AND ARGUMENT FOR APPELLEES

Sidney Wanzer & Sons, Inc., a corporation, International Dairy Company, a corporation, Gordon B. Wanzer, H. Stanley Wanzer, Louis Janata and Milk Dealers' Bottle Exchange, a corporation.

LOY N. McINTOSH,
BERNHARDT FRANK,
Counsel for said Appellees.

GANN, SECORD, STEAD AND McINTOSH,
Of Counsel.

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OPINION BELOW

The opinion of the district judge, Honorable Charles E. Woodward, appears at p. 98 of the printed record on file in this Court and is reported *sub nom. United States v. Borden Co. et al.*, 28 F. Supp. 177.

JURISDICTION

These Appellees (referred to hereinafter as the Wanzer Group) have presented a motion to dismiss the appeal, which motion this Honorable Court has reserved for the hearing. As set forth in our motion to dismiss, the Appellees, on whose behalf this brief is filed, contend:

That the holding of the district court, in sustaining Specification 5 of the Wanzer demurrers (R. 115), that the several Agricultural Acts, beginning with the Agricultural Adjustment Act of 1933, as amended in 1935, and the Agricultural Marketing Agreement Act of 1937, in devolving upon the Secretary of Agriculture exclusive, supreme and plenary powers to regulate and administer agricultural commodities, and particularly milk, *have carved initial judicial power of the district courts over that subject matter, and that the subject matter presented by the indictment is not justiciable and relates solely to the supreme, exclusive and plenary domain of executive and administrative powers vested in the Secretary of Agriculture;* wherefore the judgment appealed from by the Government is not appealable under the Criminal Appeals Act (U. S. C. Tit. 18, sec. 682), whether said Specification 5 of the Wanzer Group demurrers be treated as a demurrer or as a plea in bar. It should be noted, however, that no plea in bar was filed raising this point as to executive jurisdiction.

In short, these Appellees contend that the lower federal courts are courts of limited jurisdiction; and that, while within the scope of such limited jurisdiction, as defined by the acts, as amended, creating them and defining the jurisdiction of such lower courts, the judicial power of the district courts, within the category of cases

as to which jurisdiction is devolved upon them by the legislation creating them, is plenary; *but it is in the power of Congress to carve from the initial judicial power of the district courts initial jurisdiction over any subject matter and provide for original jurisdiction thereof by executive officer or administrative tribunal.* As there can be no partnership of jurisdiction between the judicial branch and the executive branch of the Government, the long settled course of decision of this Honorable Court is that, where any substantial power over a subject matter is subject to executive or administrative jurisdiction, initial judicial power over that subject matter is carved from the scope of the jurisdiction of the district court. Stated simply, when Congress enacted the several Agricultural Acts, it automatically limited the jurisdiction of the district courts over matters as to which the Secretary of Agriculture was given jurisdiction to enter orders after hearing. Our position is that *the Criminal Appeals Act does not contemplate appeals from findings by the district court that its* (said district court's) *jurisdiction under the respective Acts, as amended, creating it, has been carved away from initial judicial power.*

At p. 1 of the Government's brief, is the recital that the appeal is prosecuted not only under the Criminal Appeals Act but under Title 28, U. S. C., sec. 345, relating to direct review by the Supreme Court, where, in subsection 2 appears the recital, "Section 682 of Title 18, where the decision of the District Court is adverse to the United States." (U. S. C. Tit. 28, sec. 345, Judicial Code, sec. 238, as amended.) So that it is apparent that U. S. C. Tit. 28, sec. 345, confers no additional grounds of jurisdiction, but merely refers to the right granted by the Criminal Appeals Act, as amended, viz., U. S. C. Tit. 18, sec. 682.

STATEMENT

A. The Indictment

The Government's statement omits the fact that the indictment, in each of the counts thereof, charges the commencement of the alleged conspiracy as "during the month of January, 1935." As this Court may judicially notice,[1] during January and February of 1935 and, indeed, up to March 2, 1935, these Appellees and others of the Appellees engaged as producers and distributors (as well as the entire subject matter set forth in each of the counts), operated under License 30 imposed by the Secretary of Agriculture upon the Chicago Milk Marketing Area on June first, 1934, and were under the supreme, exclusive and plenary jurisdiction of said executive and administrative authority.[2] The Government virtually admits, at p. 11 of its brief, that, under *United States* v. *Hastings*, 296 U. S. 188, the third count is eliminated from this submission and is not open for review.

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[1] *Jones* v. *United States*, 137 U. S. 202;
Duncan v. *Navassa Phosphate Co.*, 137 U. S. 647;
The Paquete Habana, 175 U. S. 677;
Heath v. *Wallace*, 138 U. S. 573;
Hoyt v. *Russell*, 117 U. S. 401;
New York Indians v. *United States*, 170 U. S. 1.

[2] No allegation appears in any of the counts that a new conspiracy was entered into after March 2, 1935.

B. Specification 5 of the Wanzer Group Demurrers

Specification 5 of the Wanzer Group demurrers (R. 51, 53, 55, 56, 50, 67), adopted by certain other of the Appellees, is as follows:

> "5. The alleged conspiracy set forth in the indictment and each count thereof, relates to a subject matter that is not justiciable but is removed from the criminal jurisdiction of this court in that the Congress of the United States, in its plenary power as the legislative department of the federal government, has legislated to remove the subject matter of each count from the purview of section 1 of the Sherman Act and to devolve upon the executive department of the federal government power to regulate said subject matter by administrative action."

ARGUMENT

I.

THIS COURT HAS NO JURISDICTION UNDER THE CRIMINAL APPEALS ACT.

A. As to the Government's erroneous theory that the construction of the Sherman Act is involved instead of the carving of initial judicial power of the District Court, itself, by reason of the enactment of the several agricultural acts.

The Government contends that the jurisdiction of this Court under the Criminal Appeals Act may be supported on the ground that the judgment of the district court, sustaining the demurrers to the indictment, was based upon the construction of section 1 of the Sherman Act, upon which the indictment was founded.

We respectfully submit that the Government's entire argument as to jurisdiction under the Criminal Appeals Act is beside the point; for the lower court did not construe section 1 of the Sherman Act, nor did the lower court hold the Sherman Act invalid. As specifically stated in the opinion of the district court (28 Fed. Supp. at 187; R. 98):

> "A study of statutory policy from the Sherman Act of 1890 to the Agricultural Marketing Agreement Act of 1937 shows a constant and growing tendency on the part of Congress to control and regulate the production and marketing of agricultural products, including milk, through the administrative agency of the Secretary of Agriculture. The whole theory and pol-

icy of the Agricultural Marketing Agreement Act is that of governmental control, regulation and supervision. The production and marketing of agricultural products, including milk, has, so far as interstate commerce is concerned, been removed from the sphere of trade and barter in a free agency to a status of dependence and obedience to the supreme, exclusive and plenary control of the Secretary of Agriculture, subject to judicial review in the mode provided by the statute.

"The Court holds that, by the Agricultural Marketing Agreement Act the Congress has committed to the Executive Department, acting through the Secretary of Agriculture, full, complete and plenary power over the production and marketing, in interstate commerce, of agricultural products, including milk,"

There could be no clearer definition of what was in the mind of the district court than the above quoted language of the opinion, wherein the district judge specifically, in language admitting of no ambiguity, pointedly limits his finding and holding to the narrow issue that the district court, itself, was without jurisdiction of the subject matter by reason of the supreme, exclusive and plenary jurisdiction of the Secretary of Agriculture under the respective Agricultural Acts. *Could there be a more specific record showing that the Sherman Act was not construed by the district court?*

The Government confuses the carving away of initial judicial power with the resultant effect on classes of controversies arising under statutes over which the jurisdiction of the district courts has been limited by amendment or bill of the legislature creating and defining the jurisdiction of said courts.

Says the Government, at p. 21 of its brief: "The opinion of this Court in *United States* v. *Patten*, 226

U. S. 525, gives succinct answer to the Appellees' contention that the district court did not construe the Sherman Act, but merely gave effect to the other Acts."

But the *Patten* case has no application, for there the Court did not have before it a case of collision between initial judicial power and executive or administrative power. All that the language of the Court at p. 535 applies to is a situation where the district court has plenary jurisdiction under the Sherman Act and, acting within such plenary jurisdiction, finds that the acts charged in the indictment were not within the purview of the Sherman Act. But that is very different from the situation presented by the case at bar; for, here it is the organic limitation or restriction of the initial judicial power of the district court, itself, by reason of the enactment of the several Agricultural Acts, devolving exclusive jurisdiction upon the Secretary of Agriculture.

To avoid the narrow issues, the Government urges that the construction of other statutes in relation to the Sherman Act, to determine the application of the Sherman Act to the acts charged, makes the decision no less a construction of the Sherman Act, and cites *U. S.* v. *Kapp*, 302 U. S. 214, wherein, in a prosecution for conspiracy, under section 37 of the Criminal Code, to violate the false claim statute (section 35 of the Criminal Code) presented a question of a construction within the meaning of the Criminal Appeals Act, notwithstanding that another statute was construed. But the Court distinctly says, in the *Kapp* case, at p. 216, that "The statute, at the violation of which the conspiracy is aimed, has been treated as the statute upon which the indictment is founded, within the meaning of the Criminal Appeals Act." In other words, constructions of statutes *in pari materia* is permissible, but this Court has ruled specifically in *United*

States v. *Anderson*, 9 Wall. (U. S.) 56, that two or more different statutes can not be construed in the process of construction, unless such statutes be *in pari materia*, for, says the Court (67): "The two acts can not be construed *in pari materia*. *The one is penal, the other remedial;* the one claims a right, the other concedes a privilege." Obviously, the Agricultural Acts, of themselves, and as constituting an implied amendment or repeal of statutes, as amended, creating and defining the jurisdiction of the district courts, were purely remedial and were in no sense penal or criminal, and therefore not *in pari materia* under the settled course of decision of this Honorable Court.

We respectfully refer the Court to the Statement Opposing Jurisdiction, filed by the Wanzer Group (see motion to dismiss), for a reply to the other authorities relied upon by the Government in support of jurisdiction under the Criminal Appeals Act. As shown in said Statement, there is no jurisdiction in the Supreme Court under the Criminal Appeals Act, whether the demurrers be treated as demurrers or as pleas in bar.

It therefore follows that the authorities relied upon by the Government, to sustain its theory that the district court construed the Sherman Act, are without any application.

B. The settled course of decision of this Honorable Court, beginning with Texas P. R. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, and, indeed, expressed in several earlier cases, is that, where an executive or administrative body, endowed with fact-finding powers and authority to make administrative orders, is created by Congress, the jurisdiction of such executive or administrative body is initially supreme and exclusive, and initial judicial power over such subject matter is withdrawn.

The Government's brief concedes that there is some power in the Secretary of Agriculture to regulate and administer agricultural commodities, and particularly milk, but relies upon the lack of clarity as to the exclusive power of the Secretary in the premises as a basis for its erroneous theory that executive power and judicial power may coexist concurrently as to the same subject matter. The separation of departments in the Federal Constitutional system precludes such theory of concurrent authority and some authority, on the Government's own theory, having been given to the Secretary of Agriculture, all initial judicial power of the district courts is thereby removed and no justiciable controversy is presented by the subject matter of the indictment.

As well stated in *Meriwether* v. *Garrett*, 102 U. S. 472, at 515:

> "* * * a strict confinement of each department within its own proper sphere was designed by the founders of our government and is essential to its successful administration."

So in *McCray* v. *United States*, 195 U. S. 27, at p. 55:

> "As aptly said by the court, speaking through Mr. Justice Miller, in *Kilbourn* v. *Thompson*, 103 U. S. 168, p. 190:

'It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to the government, whether State or National, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other.'"

In the recent case of *O'Donoghue* v. *United States*, 289 U. S. 516, at p. 530, the court says:

"The Constitution, in distributing the powers of government, creates three distinct and separate departments—the legislative, the executive, and the judicial. This separation is not merely a matter of convenience or of governmental mechanism. Its object is basic and vital, *Springer* v. *Philippine Islands*, 277 U. S. 189, 201, namely, to preclude a commingling of these essentially different powers of government in the same hands. And this object is none the less apparent and controlling because there is to be found in the Constitution an occasional specific provision conferring upon a given department certain functions, which, by their nature, would otherwise fall within the general scope of the powers of another. Such exceptions serve rather to emphasize the generally inviolate character of the plan.

"If it be important thus to separate the several departments of government and restrict them to the exercise of their appointed powers, it follows, as a logical corollary, equally important, that each department should be kept completely independent of the

> others—independent not in the sense that they shall not cooperate to the common end of carrying into effect the purposes of the Constitution, but in the sense that the acts of each shall never be controlled by, or subjected, directly or indirectly, to, the coercive influence of either of the other departments. James Wilson, one of the framers of the Constitution and a justice of this court, in one of his law lectures said that the independence of each department required that its proceedings 'should be free from the remotest influence, direct or indirect, of either of the other two powers.' Andrews, The Works of James Wilson (1896), Vol. 1, p. 367. And the importance of such independence was similarly recognized by Mr. Justice Story when he said that in reference to each other, neither of the departments 'ought to possess, directly or indirectly, an overruling influence in the administration of their respective powers.' 1 Story on the Constitution, 4th ed. § 530. To the same effect, The Federalist (Madison) No. 48. And see *Massachusetts* v. *Mellon*, 262 U. S. 447, 488."

There would be no reason for the enactment of provisions endowing the administrative or executive tribunals with certain powers if power was left in the courts to act concurrently with the executive or administrative tribunal without reference to previous action by the executive or administrative authority in the premises.

The doctrine is stated in *Texas & P. R. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, at p. 441:

> "Indeed no reason can be perceived for the enactment of the provision endowing the administrative tribunal, which the act created, with power, on due proof, not only to award reparation to a particular shipper, but to command the carrier to desist from violation of the act in the future, thus compelling the alteration of the old or the filing of a new schedule, conformably to the action of the Commission, if the power was left in courts to grant relief on complaint of any shipper, upon the theory that the

established rate could be disregarded and be treated as unreasonable, without reference to previous action by the Commission in the premises."

To the same effect see:

Robinson v. *Baltimore & Ohio R. Co.*, 222 U. S. 506, 509;

Procter & Gamble Co. v. *United States*, 225 U. S. 282;

I. C. C. v. *Louisville & N. R. Co.*, 227 U. S. 88, 92;

Mitchell Coal Company v. *Pennsylvania*, 230 U. S. 247;

U. S. v. *Louisville & N. R. Co.*, 235 U. S. 314, 320;

Lehigh Valley R. Co. v. *U. S.*, 243 U. S. 412;

Louisville & N. R. Co. v. *U. S.*, 245 U. S. 463;

Skinner & Eddy Corp. v. *United States*, 249 U. S. 557, 562;

Block v. *Hirsh*, 256 U. S. 135;

Stafford v. *Wallace*, 258 U. S. 495;

Federal Trade Commission v. *Curtis Publishing Company*, 260 U. S. 568;

Federal Trade Commission v. *Pacific States Paper Trade Association*, 273 U. S. 52;

Tagg Bros. & Moorhead v. *U. S.*, 280 U. S. 420, 443;

Railroad Comrs. v. *Great Northern R. Co.*, 281 U. S. 412;

Phillips v. *Commissioner of Internal Revenue*, 283 U. S. 589;

Arizona Grocery Co. v. *Atchison T. & S. F. R. Co.*, 284 U. S. 370, 384;

United States Navigation Co. v. *Cunard S. S. Co. Ltd.*, 284 U. S. 474, 483.

St. Joseph Stockyards Co. v. *United States*, 298 U. S. 38, 49;

American Telephone & Telegraph Co. v. *United States*, 299 U. S. 232;

Swayne & Hoyt v. *U. S.*, 300 U. S. 297, 307;

Anniston Mfg. Co. v. *Davis*, 301 U. S. 337, 343-346;

Myers v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 48;

Shields v. *Utah, Idaho R. Co.*, 305 U. S. 177.

United States v. *Rock Royal Cooperative, Inc.*, Advance Sheets 83, L. Ed. p. 981;

Rochester Telephone Corp. v. *United States*, 307 U. S. 125.

In *Procter & Gamble Company* v. *U. S.*, 225 U. S. 282, the reason for the doctrine is stated at pages 298-299:

> "Second, because the recognition of a right in a court to assert the power now claimed would of necessity amount to a substitution of the court for the Commission or at all events would be to create a divided authority on a matter where from the beginning primary singleness of action and unity was deemed to be imperative."

In *United States Navigation Co.* v. *Cunard SS Co., Ltd.*, 284 U. S. 474, the action was brought by the navigation company to enjoin respondents from continuing an alleged combination and conspiracy in violation of the Sherman Anti-Trust Act. The district court dismissed the amended appeal on the ground that the matters complained of were within the exclusive jurisdiction of the United States Shipping Board. This Court, in affirming the decree of the lower court, per Mr. Justice Sutherland, at p. 483, says:

> "That the Shipping Act covers the dominant facts alleged in the present case as constituting a violation of the Antitrust Act is clear * * * [485]. A comparison of the enumeration of wrongs charged in the bill with the provisions of the sections of the Shipping Act above outlined conclusively shows, without going into detail, that the allegations either constitute direct

and basic charges of violations of these provisions or are so interrelated with such charges as to be in effect a component part of them; and the remedy is that afforded by the Shipping Act, *which to that extent supersedes the antitrust laws.* Compare *Keogh* v. *Chicago & N. W. Ry. Co., supra* [260 U. S. 162]. *The matter, therefore, is within the exclusive preliminary jurisdiction of the Shipping Board.* The scope and evident purpose of the Shipping Act, as in the case of the Interstate Commerce Act, are demonstrative of this conclusion. Indeed, if there be a difference, the conclusion as to the first named act rests upon stronger ground, since the decisions of this court compelling a preliminary resort to the commission were made in the face of a clause in § 22 of the Interstate Commerce Act, that nothing therein contained should in any way abridge or alter existing common law or statutory remedies, but that the provisions of the act were in addition to such remedies (*Mitchell Coal Co.* v. *Pennsylvania R. Co.*, 230 U. S. 247, 256); a clause that finds no counterpart in the Shipping Act."

No purpose will be served in burdening this Court with a lengthy analysis of all of the decisions on this point tabulated above, in view of the overwhelming weight of the reasoning supporting the great chain of decisions.

In *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, the Court, in directing the dismissal of a bill in equity to enjoin the National Labor Relations Board, because of the supreme and exclusive jurisdiction of said Board, per Mr. Justice Brandeis, at p. 48, says:

"*Second.* The District Court is without jurisdiction to enjoin hearings because the power 'to prevent any person from engaging in any unfair practice affecting commerce,' has been vested by Congress in the Board and the Circuit Court of Appeals, and Congress has declared: 'This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established

by agreement, code, law, or otherwise.' The grant of that exclusive power is constitutional, because the Act provided for appropriate procedure before the Board and in the review by the Circuit Court of Appeals an adequate opportunity to secure judicial protection against possible illegal action on the part of the Board. No power to enforce an order is conferred upon the Board. To secure enforcement, the Board must apply to a Circuit Court of Appeals for its affirmance. And until the Board's order has been affirmed by the appropriate Circuit Court of Appeals, no penalty accrues for disobeying it. The independent right to apply to a Circuit Court of Appeals to have an order set aside is conferred upon any party aggrieved by the proceeding before the Board. The Board is even without power to enforce obedience to its subpoena to testify or to produce written evidence. To enforce obedience it must apply to a District Court; and to such an application appropriate defence may be made.

"As was said in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 46, 47, the procedural provisions, 'do not offend against the constitutional requirements governing the creation and action of administrative bodies. See *Interstate Commerce Commission* v. *Louisville & Nashville R. Co.*, 227 U. S. 88, 91. The Act establishes standards to which the Board must conform. There must be complaint, notice and hearing. The Board must receive evidence and make findings. The findings as to the facts are to be conclusive, but only if supported by evidence. The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced. Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of constitutional right or statutory authority, are open to examination by the court. We construe the procedural provisions as affording adequate opportunity to secure judicial protection against arbitrary action in accordance with the well-settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation.'

"It is true that the Board has jurisdiction only if the complaint concerns interstate or foreign commerce. Unless the Board finds that it does, the complaint must be dismissed. And if it finds that interstate or foreign commerce is involved, but the Circuit Court of Appeals concludes that such finding was without adequate evidence to support it, or otherwise contrary to law, the Board's petition to enforce it will be dismissed, or the employer's petition to have it set aside will be granted. Since the procedure before the Board is appropriate and the judicial review so provided is adequate, Congress had power to vest exclusive jurisdiction in the Board and the Circuit Court of Appeals. *Anniston Manufacturing Co.* v. *Davis*, 301 U. S. 337, 343-346."

See to the same effect, *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337, 343, sustaining the right to recover refunds of processing taxes paid under the Agricultural Adjustment Act of 1933, which provision as to processing taxes this Court held unconstitutional in *United States* v. *Butler*, 297 U. S. 1.

It is not the function or province of a court to absorb administrative or executive functions to itself; for "The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." (*Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 286, and cases there cited; *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125.)

A succinct reason for affirmance of the judgment appealed from by the Government is the statement in *Stafford* v. *Wallace*, 258 U. S. 495, at 520:

"If Congress could provide for punishment or restraint of such conspiracies after their formation, through the Antitrust Law, as in the *Swift Case*, certainly it may provide regulations to prevent their formation."

The steadfast adherence to the doctrine that, where jurisdiction in the first instance is in the executive officer or administrative agency, no initial judicial power (in the courts) exists, is a clear demonstration that the separation of the three departments, viz., executive, legislative and judicial, forbids a partnership between, or joint exercise of jurisdiction by, any one of such departments with another.

In 1890, when the Sherman Antitrust Act was adopted, Congress had not yet provided a labyrinthian system of administrative agencies. As we have pointed out, the *Abilene* case made clear that matters within the jurisdiction of the Interstate Commerce Commission carved from initial judicial power of the lower federal courts any and all initial judicial power.

The consideration of this question does not involve the body of decisions relating to attack on administrative orders, or review of such orders, or the enforcement of such orders, by the machinery inhering in the judicial system, that is, in the courts. Necessarily administrative or executive orders must be within the jurisdiction of the executive officer or the administrative body; and such orders can not violate definitive legislation of Congress or override the Constitution.

To revert to the narrow question of carving initial judicial power from the courts until the executive officer or administrative tribunal has first exercised their exclusive jurisdiction over the subject matter, we come to the list of parallel instances wherein, with the growth of administrative bodies, this court has never departed from the doctrine that initial judicial power is carved from the jurisdiction of the lower courts in every instance of administrative or executive control, except as to matters wherein the statute creating the executive or administra-

tive jurisdiction expressly provides that initial judicial power of the courts shall remain and that a remedy may be applied in the alternative, that is, by both the courts and the executive or administrative agency. But no such alternative initial jurisdiction appears in any of the Agricultural Acts.

Since the Sherman Act, the sequence of withdrawal of applicability to agricultural commodities, including milk, from initial judicial power is shown by

1. Capper-Volstead Act, particularly section 2 thereof, which commits to the Secretary of Agriculture the power of regulation and visitation.
2. Cooperative Marketing Act of July 2, 1926 (U. S. C. Tit. 7, sec. 455),—showing the creation of the Farm Credit Administration in the Department of Agriculture, the Government acting as a clearing house for cooperatives.
3. Agricultural Adjustment Act of May 12, 1933, known as A. A. A. (U. S. C. Tit. 7, sec. 601, *et seq.*)
4. Amendment Agricultural Adjustment Act on August 24, 1935 (49 Stat. 750).
5. Agricultural Marketing Agreement Act of June 3, 1937 (U. S. C. Tit. 7, sec. 601, *et seq.*; Ch. 296, 50 Stat. 246).

Of these acts, only the production, control and processing tax provisions of the 1933 Agricultural Adjustment Act were held invalid in *United States* v. *Butler*, 297 U. S. 1. Accordingly, the 1935 amendment of the 1933 act was designed to correct doubts as to the marketing provisions. Congress, by the 1937 Agricultural Marketing Agreement Act, reenacted, confirmed and validated without substantial change the provisions of the 1933 Agricultural Act as amended in 1935, relating to marketing agreements and orders. This court sustained the validity of the 1937 Agricultural Marketing Agreement Act in *United States*

v. *Rock Royal Co-Operative, Inc.*, ... U. S. ... (59 S. Ct. 993) and *H. P. Hood & Sons, Inc.* v. *United States, et al.*, ... U. S. ... (59 S. Ct. 993), opinions wherein were rendered on June 5, 1939.

The effect of the holdings in the *Rock Royal Co-Operatives* and *H. P. Hood & Sons* case, is to validate all provisions of the 1933 act and 1935 amendment thereof, relating to marketing agreements and orders, for such provisions were substantially reenacted in the 1937 Agricultural Marketing Agreement Act.

The holding in the *Abilene* case has been applied by this court to the initial executive or administrative agencies listed chronologically below, by year the particular statute was enacted, though the decisions have been listed chronologically, *infra*, without allocation to the particular administrative agency:

(a) Interstate Commerce Commission, in 1910.

(b) Federal Trade Commission, in 1914.

(c) United States Shipping Board, in 1916.

(d) District of Columbia Rent Commission, in 1919.

(e) Secretary of Agriculture: Packers and Stockyards Act of 1921.

(f) Board of Tax Appeals, 1926.

In addition to this course of decision by this court, as to the particular administrative agencies, we have the following, among other, additional legislation enacted in the light of said course of decision:

1920. Federal Power Commission Act of June 10, 1920; ch. 285, sec. 20, 41 Stat. L. 1063; U. S. C. Tit. 16, sec. 813.

1922. Grain Futures Commission, 42 Stat. L. 998, 1002; U. S. C. Tit. 7, secs. 9, 10.

1927. Federal Radio Act (U. S. C. A. Tit. 47, sec. 15 and editorial note).

1934. Federal Communications Commission (U. S. C. Tit. 47, sec. 303).

1934. Securities and Exchange Commission (U. S. C. Tit. 15, sec. 78d).

1935. Federal Labor Board (U. S. C. Tit. 29, sec. 151).

1937. Bituminous Coal Commission (U. S. C. Tit. 15, sec. 828).

Mr. Justice Brandeis, in *United States* v. *Griffin*, 303 U. S. 226, in reviewing the growth of administrative bodies, at p. 235, says:

> "In recent years the field of administrative determination has been widely extended; and the duty of making many of these determinations has been imposed upon the Interstate Commerce Commission. Some of the statutes contain specific provision making applicable jurisdiction under the Urgent Deficiencies Act. This is true of the Emergency Railroad Transportation Act of 1933, 48 Stat. 211, 216, as amended, 49 Stat. 376, and of the Motor Carrier Act of 1935, 49 Stat. 543, 550. Compare Transportation of Explosives Act (Criminal Code, § 233), 35 Stat. 554, 555, as amended, 35 Stat. 1088, 1135, 41 Stat. 1445. It is true likewise of several statutes under which the determinations are to be made by other administrative tribunals. Shipping Act of 1916, 39 Stat. 728, 738, superseded by 49 Stat. 1985 (United States Shipping Board); Packers & Stockyards Act of 1921, 42 Stat. 159, 168 (Secretary of Agriculture); Perishable Agricultural Commodities Act of 1930, 46 Stat. 531, 535 (Secretary of Agriculture); Emergency Railroad Transportation Act of 1933, *supra* (Federal Coordinator of Transportation); Communications Act of 1934, 48 Stat. 1064, 1093, as amended, 50 Stat. 189 (Federal Communications Commission). The orders for which review is provided by each of these statutes are like the orders under the Interstate Commerce Act fixing rates payable by shippers. Im-

proper injunctive relief of such orders or delay in final determination of their validity may seriously affect the public interest by preventing or obstructing action under those statutes."

Parenthetically, it should be noted that the learned justice appended in his footnote 7, an additional exposition of *instances of administrative growth.*

To make our position clear, it is not our purpose to attack New Deal legislation and the policy of such legislation in enlarging executive or administrative jurisdiction and removing or carving away the subject matter thereof from initial judicial control. If anything, it is the Antitrust Division that is attacking the New Deal philosophy, in attempting to nullify the supreme, exclusive and plenary executive jurisdiction of the Secretary of Agriculture over agricultural commodities and milk. For that exclusive jurisdiction, Congress has appropriated billions of dollars.

It is unnecessary to review the various subject matters placed under administrative jurisdiction in the last decade. Obviously, the sustaining of the Government's contention in the present case would carry with it a train of disaster, resulting in a virtual collapse of government. If it were to be inscribed into the body of federal law that all executive and administrative jurisdiction is frail and transitory and subject to concurrent jurisdiction of the federal courts, the chaos resulting to the business structure of this nation becomes at once apparent.

Let it be known that a citizen obeys an executive or administrative order at his peril, and what becomes of the executive power? Under such circumstances will the citizen obey any executive or administrative order if obedience spells indictment? Where, in our constitutional system, can there be found any authority for compelling

a citizen to act pursuant to executive authority and, after such compulsion, subjecting the obedient citizen to the hazard of criminal prosecution? We solemnly submit that the reversal of the judgment appealed from would be the declaration of the staggering doctrine that legislative and executive power no longer exist and that the three sovereign departments of government are no longer separate entities.

The stated policy of the several Agricultural Acts is that each thereof was enacted to remedy conditions brought about by the economic depression. These Agricultural Acts are part of a fabric of legislation designed to alleviate trade and commerce because of the world-wide economic situation. The underlying philosophy is that the economic needs of the nation and its citizens can best be served by the national policy now established by Congress, that the philosophy of individualism and unrestricted competition must give way to collectivism, cooperation and control of harmful competition. As this Court has repeatedly stated, it is not concerned with the wisdom of legislation, if it be within constitutional powers.

To sustain the theory of the Department of Justice would be to overrule the decisions of this Honorable Court in the *Rock Royal, Inc.* case and the *Hood* case; and in fact, the entire code of decisions relating to the powers of Congress to delegate to executive officers and administrative tribunals jurisdiction of defined subject matter and remove such jurisdiction from initial judicial power. It calls for no argument at this late date to demonstrate that this Court will not substitute its opinion as to the wisdom of legislation for that of the wisdom of Congress in enacting a particular statute.

The Secretary of Agriculture, under the several Agri-

cultural Acts, had ample jurisdiction and power, by regulations, hearings, orders, etc., to restrain the formation of any alleged conspiracy as is attempted to be set forth in the several counts of the indictment in the instant case, and to invoke the aid of the courts to enforce such orders. The decisions are legion that resort to administrative remedies may be made a condition precedent to a judicial hearing (*Northern P. R. Co.* v. *Solum*, 247 U. S. 477, 483; *First Nat. Bank* v. *Weld County*, 264 U. S. 450, 454; *United States Nav. Co.* v. *Cunard SS Co.*, 284 U. S. 474); and this is so even though the party is asserting deprivation of rights secured by the Federal Constitution (*First Nat. Bank* v. *Weld County*, 264 U. S. 450).

As we shall demonstrate in division II of the argument, several provisions of the Agricultural Acts, particularly in the Agricultural Marketing Agreement Act of 1937, specifically provide for action by the Secretary of Agriculture, or claim made on a hearing before the Secretary of Agriculture, as a condition precedent to invocation of judicial power.

C. Congress has plenary legislative power to abolish the lower federal courts and to enlarge or limit the jurisdiction of such courts.

In *Kline* v. *Burke Constr. Co.*, 260 U. S. 226, the Court, in holding that the right of a citzen to prosecute his case against a citizen of another state in a federal court is not a right granted by the constitution, at p. 234, says:

> "Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution.

Turner v. *Bank of North America*, 4 Dall. 8, 10; *United States* v. *Hudson & Goodwin*, 7 Cranch, 32; *Sheldon* v. *Sill*, 8 How. 441, 448; *Stevenson* v. *Fain*, 195 U. S. 165. The Constitution simply gives to the inferior courts the capacity to take jurisdiction in the enumerated cases, but it requires an act of Congress to confer it. *The Mayor* v. *Cooper*, 6 Wall. 247, 252. And the jurisdiction having been conferred may, at the will of Congress, be taken away in whole or in part; and if withdrawn without a saving clause all pending cases though cognizable when commenced must fall. *The Assessors* v. *Osbornes*, 9 Wall. 567, 575."

See also *Sheldon* v. *Sill*, 8 How. 441, 448.

The situation presented by the enactment of the several Agricultural Acts, beginning with the original Agricultural Adjustment Act of 1933, is comparable to that of the amendment or partial repeal of an earlier statute in conflict therewith, viz., said Agricultural Acts, in fact, did amend or partially repeal the provisions of the acts, as amended, defining the jurisdiction of the district courts so as to carve therefrom jurisdiction over agricultural commodities, including milk, devolved by said Agricultural Acts upon the Secretary of Agriculture.

In *Ex parte McCardle*, 7 Wall. 506, where the Act of March, 1868, took away the jurisdiction defined by the Act of 1867, of this Court, in cases of *habeas corpus*, this Court, in holding that it no longer had jurisdiction of the appeal, at p. 514, says:

"We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words.

"What, then, is the effect of the repealing act upon the case before us? We cannot doubt as to this. Without jurisdiction the court cannot pro-

ceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle."

So it is that in 1892, this Court, in a *habeas corpus* case arising under the Chinese Exclusion Act, *Fong Yue Ting* v. *United States*, 149 U. S. 698, in pointing out that the lower federal courts are courts of limited jurisdiction but that within their scope of jurisdiction their judicial power is plenary and that Congress may remove from the scope of controversies within judicial power, *i. e.*, carve from the Act conferring jurisdiction, and place certain controversies beyond the cognizance of the courts of the United States, at page 714, says:

"So claims to recover back duties illegally exacted on imports may, if Congress so provides, be finally determined by the Secretary of the Treasury. *Cary* v. *Curtis*, 3 How. 236; *Curtis* v. *Fiedler*, 2 Black, 461, 478, 479; *Arnson* v. *Murphy*, 109 U. S. 238, 240. But Congress may, as it did for long periods, permit them to be tried by suit against the collector of customs. Or it may, as by the existing statutes, provide for their determination by a board of general appraisers, and allow the decisions of that board to be reviewed by the courts in such particulars only as may be prescribed by law. Act of June 10, 1890, c. 407, §§ 14, 15, 25, 26 Stat. 137, 138, 141; *In re Fassett*, 142 U. S. 479, 486, 487; *Passavant* v. *United States*, 148 U. S. 214.

"To repeat the careful and weighty words uttered by Mr. Justice Curtis, in delivering a unanimous judgment of this court upon the question what is due process of law: 'To avoid misconstruction upon so grave a subject, we think it proper to state that we do not consider Congress can either withdraw from judicial cognizance any

matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty; nor, on the other hand, can it bring under the judicial power a matter which, from its nature, is not a subject for judicial determination. At the same time, there are matters, involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper.' *Murray* v. *Hoboken Co.*, 18 How. 272, 284."

It is this theory that furnishes the basis for the doctrine of the *Abilene Cotton Oil Co.* case and the lengthy chain of decisions founded thereon.

We respectfully submit that no construction or application of the Sherman Act was made by the district court, and that the demurrer can not stand as a plea in bar for the several reasons presented in the Wanzer Group Statement in Opposition (see motion to dismiss of Wanzer group and not restated in this brief); wherefore this appeal should be dismissed for want of jurisdiction.

D. Whether the opinion of the district court as to the exclusive jurisdiction of the Secretary of Agriculture be correct or not is immaterial; for, upon the government's own theory of conflict of jurisdiction as between the district court and the Secretary of Agriculture, said executive officer having, by affirmative action, exercised jurisdiction over the Appellees under License 30 for the Chicago Milk Marketing Area during January and February and up to March 2, 1935, and as the jurisdiction of the district court was not invoked until the return of the indictment in 1938, the rule of comity, applicable to such conflicts of jurisdiction, precludes a direct appeal to the Supreme Court under the settled course of decision.

We have seen the almost innumerable decisions of the Supreme Court that Congress may carve from the initial judicial power of the lower federal courts and devolve jurisdiction over the carved subject matter upon an executive officer or administrative tribunal. *The vesting of jurisdiction in the Secretary of Agriculture and the actual exercise by said executive office, of his exclusive administrative jurisdiction in the Chicago Milk Marketing Area, under License 30, in January, February, and up to March 2, 1935*—bearing in mind that the jurisdiction of the district court was not invoked until the return of the indictment herein in November, 1938—created a situation comparable to the dismissal of a suit in the federal court, as in *Harkin* v. *Brundage*, 276 U. S. 36, because of an arrest of property in a prior suit in a state court, involving the same subject matter.

In the *Harkin* v. *Brundage* case, a creditor's bill was filed in the federal court and a stockholders' suit in the state court, but the test was the substantial identity of the subject matter, although there were differences in

procedure in the respective suits. *Harkin* v. *Brundage* did, in fact, come up from the Circuit Court of Appeals and, under the settled doctrine* of this Court, as stated by Chief Justice White in *Railroad Commission* v. *Louisville & N. R. Co.*, 225 U. S. 272, 279.

Thus there is no jurisdictional question under section 238 of the Judicial Code (U.S.C., Tit. 28, Sec. 345), even if this were treated as a civil instead of a criminal case, to authorize a direct appeal to this court in the instant case. And, in this connection, observe that section 238 of the Judicial Code does not enlarge upon the instances wherein, in criminal cases, direct appeals may be taken by the Government to the Supreme Court.

Under the Criminal Appeals Act, the "exceptional right to review in favor of the United States" (*United States* v. *Keitel*, 211 U. S. 370, 399) is "an innovation in criminal jurisdiction in certain classes of prosecutions, it cannot be extended beyond its terms." (*United States* v. *Dickinson*, 213 U. S. 92, 103.)

The Secretary of Agriculture, having stepped into the Chicago Milk Marketing Area prior to January, 1935, the date set in the indictment as the commencement of the conspiracy, and said executive having continued to exercise his exclusive executive authority within the Chicago Milk Shed up to March 2, 1935, and as no provision appears in the Agricultural Acts since that time, authorizing the Secretary of Agriculture to abdicate the mandatory

*"That it is also true as to the position of the appellees, is demonstrated by observing that it has long been settled that a mere conflict between courts, concerning the right to adjudicate upon a particular subject matter growing out of a priority of jurisdiction in another forum, involves a question of comity which there would be no right to consider if the direct appeal involved solely a question of jurisdiction. *Courtney* v. *Pradt*, 196 U. S. 89, 91, and cases cited."

statutory duties devolved upon him, it must be assumed that, from March 2, 1935, up to the date of the return of the indictment in November, 1938, the Secretary of Agriculture had the potential power to control the Chicago Market (cf. *Harkin* v. *Brundage*, 276 U. S. 36).

In cases of conflict of jurisdiction, the court first acquiring jurisdiction of the *res* and having the present potential power to grant a remedy, retains such jurisdiction as a bar to a subsequent suit affecting the same *res*, where the remedy, i. e., receiver, is actually obtained prior to application therefor in the earlier suit under which a potential power to obtain the appointment of a receiver existed (See *Harkin* v. *Brundage*, 276 U. S. 36).

The mere fact that, since the Agricultural Acts, the Secretary of Agriculture is an administrative tribunal over controversies involving agricultural commodities, including milk, does not remove this case from the theory of conflict of jurisdiction, relied upon by the Government, because the Government's own theory assumes and, indeed, admits, a conflict of jurisdiction between the Secretary of Agriculture on the one hand, and the district court on the other.

We submit that we have demonstrated that, in the light of the settled doctrine of this Court that no direct appeal to this Court would lie in a case of an order involving a mere conflict of jurisdiction, the appeal from the judgment in this case should be dismissed, whether or not the Government be correct in its argument on the merits.

With these preliminary observations in mind, let us proceed to reply to the several subdivisions of the Government's argument under division II of its brief.

II.

The Wanzer Group Appellees do not contend that anything has been withdrawn from the Sherman Act, but that initial judicial power of the district courts as to agreements, combinations or conspiracies relating to the subject matter devolved upon the Secretary of Agriculture, has been carved away or rescinded.

In view of the carving of initial judicial power of the district courts, the provisions of the Sherman Act, if applied to combinations as to agricultural products, including milk—a plain case of definition and creation of an alleged crime without any jurisdiction in a district court to try an indictment thereunder, as guaranteed by the Fifth and Sixth Amendments of the Constitution of the United States—presents a question not involved on this appeal and expressly excluded by the finding of the district judge in the portion of his opinion quoted at p. 6, *infra*, wherein the district court makes a specific finding that the holding on Counts 1, 2 and 4 is based entirely upon the carving of initial judicial power of the district court, itself, because of the several Agricultural Acts, conferring exclusive, supreme and plenary jurisdiction of the subject matter.

Stated simply, the carving of initial judicial power of the district courts over a subject matter devolved upon exclusive executive and administrative jurisdiction, has left the Sherman Act in a condition wherein it may include alleged conspiracies affecting milk, but without any practical effect because the district courts have been deprived of initial jurisdiction over such conspiracies—presenting a spectacle of an alleged crime on the statute books, but no court to try an indictment therefor.

A. As to the Government's contention that agricultural commodities are within the purview of the Sherman Act.

We respectfully submit that we have demonstrated that the Government's contention in this regard is without substance.

B. As to the Government's contention that immunity from application of the Sherman Act cannot be implied but must be expressly granted.

We do not contend for immunity from the Sherman Act, but that the Agricultural Acts, commencing with the Agricultural Adjustment Act of 1933, carved from the initial judicial power of the district court any initial jurisdiction over the subject matter, viz., agricultural commodities, including milk, and those engaged in the production and marketing thereof.

To support its theory of exemptions from statutes, the government cites three cases:

U. S. v. *Barnes*, 222 U. S. 513, 520.
Keokuk Ry. v. *Missouri*, 152 U. S. 306.
Frost & Wenie, 157 U. S. 46.

Let us analyze those decisions.

In *United States* v. *Barnes*, 222 U. S. 513, the court, in holding that subsequent legislation upon the general subject of oleomargarine taxes, covered by a code or systematic collection of general rules dealing with said subject in a comprehensive way carries with it an implication that the general rules are not superseded, save as the contrary clearly appears, at page 521 says:

> "We conclude that, while the express extension of particular sections in chapter 3, dealing with special taxes, to the like taxes imposed by §3 of the Oleo-

margarine Act may operate as an implied exclusion of the other sections in that chapter, it does not in any wise restrict or affect the operation of any of the general sections in chapters 1 and 2. And as § 3177 is a part of chapter 2, is general in its terms, and does not appear to be repugnant to any provision in the Oleomargarine Act, we think the question first above stated must be answered in the affirmative."

But the Agricultural Acts do not relate to the same code of legislation viz. Monopolies, etc., as that which covers the Sherman Act. The Agricultural Acts are remedial; and the Sherman Act is penal, wherefore the said statutes are not *in pari materia*, let alone, part of the same code of regulations relating to the penal act, viz. Sherman Act.

Indeed the *Barnes* case is authority for the doctrine that rules of statutory construction do not obtain unless there be ambiguity. Certainly no ambiguity exists either in the Sherman Act or in the Agricultural Acts. As well stated in *Russell Motor Car Co.* v. *United States*, 261 U. S. 514, at page 519:

> "Rules of statutory construction are to be invoked as aids to the ascertainment of the meaning or application of words otherwise obscure or doubtful. *They have no place as this court has many times held, except in the domain of ambiguity.* (*Hamilton* v. *Rathbone*, 175 U. S. 414, 421; *United States* v. *Barnes*, 222 U. S. 513, 518, 519.)"

The entire philosophy of the Agricultural Acts is the exact opposite of that underlying the Sherman Act. The two systems of philosophy are diametrically opposed to each other.

In *Frost* v. *Wenie*, 157 U. S. 46, the court held that a later statute affecting trust lands of the Osage Indians could not repeal an earlier statute vesting rights in the Indians, since such repeal would work an impairment of

the rights guaranteed to the Indians by the treaty of 1865. Manifestly a statute violative of a treaty is unconstitutional. But this Honorable Court has expressly held in the *Rock Royal Cooperative* case that the Agricultural Acts were constitutional laws and that the executive and administrative jurisdiction vested and devolved thereby in and upon the Secretary of Agriculture were constitutional and valid.

In *Keokuk Ry. Co.* v. *Missouri*, 152 U. S. 301, Mr. Justice Brown says (304):

> "The question in this case is whether the defendant, the Keokuk & Western Railroad Company, was entitled to the exemption of its property from taxation contained in the original charter to the Alexandria & Bloomfield Railroad Company, of which road it is the successor in interest."

All that the *Keokuk* case holds is that the dissolution of a corporation after an intervening change of the Constitution of Missouri of 1865 (prohibiting the legislature to exempt property from taxation) and the creation of a new corporation to be successor in interest of the dissolved corporation did not operate to confer upon the new corporation the exemption from taxation possessed by the old corporation.

We are not contending that the Agricultural Acts overruled or transgressed the Constitution of the United States. The Agricultural Marketing Agreement Act of 1937 (reenacting the provisions of the 1933 A. A. A. as amended in 1935) was held to be constitutional in *United States* v. *Rock Royal*, ... U. S. .....

To revert to the *Keokuk Ry Co.* case, at page 310:

> "It follows from this that when the new corporation came into existence, it came precisely as if it had been organized under a charter granted at the

> date of the consolidation, and *subject to the constitutional provisions* then existing, which required (Art. 11, sec. 16) that no property, real or personal, should be exempted from taxation, except such as was used exclusively for public purposes; in other words that the exemption from taxation contained in section 9 of the original charter of the Alexandria & Bloomfield Railway Company did not pass to the Missouri, Iowa & Nebraska Company."

By analogy, the Agricultural Acts held to be constitutional in the *Rock Royal* and *H. P. Hood Co.* cases in providing for a complete and exclusive executive and administrative jurisdiction in the Secretary of Agriculture over agricultural commodities, including milk, and those engaged in the production, handling and marketing thereof, operated to carve from the scope of controversies within the initial judicial power of the district courts (mere creatures of Congress) any and all initial jurisdiction of the subject matter devolved upon exclusive executive and administrative jurisdiction.

In another view of the government's theory, its very reliance upon the effect of the Agricultural Acts as working, or failing to work, exemptions from the Sherman Act is an admission of record by the government that it is seeking a construction of the Agricultural Acts upon which the indictment is *not* founded, wherefore, the judgment on demurrer is not reviewable (see Motion to Dismiss, and Statement Opposing Jurisdiction filed by Wanzer Group). It necessarily follows that the government itself has demonstrated that the appeal should be dismissed.

The Government embarks upon a lengthy argument, not supported by citation of authority, to sustain its major premise that the Agricultural Acts did not exclude agricultural commodities and those engaged in the pro-

duction, handling and marketing thereof from the purview of the Sherman Act. In short, the Government's theory is that the sole and only purpose of the Agricultural Acts was to authorize the farmers to enter into marketing agreements. A sufficient answer is that farmers were authorized to form cooperatives by the Capper-Volstead Act and the Co-operative Marketing Act. What, then, would have been the purpose of Congress to enact the Agricultural Adjustment Act of 1933, the amendment thereof in 1935, and the Agricultural Marketing Agreement Act of 1937, if it were intended merely to restate the provisions of the Capper-Volstead Act?

The *Appalachian Coal Company* case is wholly inapplicable. The very holding of this Honorable Court, in the *Rock Royal* and *Hood* cases, that the Secretary of Agriculture was vested with executive and administrative jurisdiction over agricultural commodities, including milk and the producers and distributors thereof, is a final and conclusive determination that the Government's theory is wholly untenable. But here, again, we beg to remind the Court that, throughout the course of its brief, the Government has studiously avoided answering the question of carving from the initial judicial power of district courts the subject matter of agricultural commodities and those engaged in the production, handling and marketing thereof.

Obviously, the question of implied repeal or repugnancy, as between the Agricultural Acts and the Sherman Act, is beside the point, except that the very policy of the Agricultural Acts, as we shall later show, is utterly repugnant, and no greater example of repugnancy can be imagined than that between the Agricultural Acts and the Sherman Act; and, if there be repugnancy, the authorities relied upon by the Government concede that the two statutes can not stand *in pari materia*.

The two Acts are repugnant, both in theory, philosophy and intent of Congress. The Sherman Act concerns itself with monopolies and punishment thereof; the Agricultural Acts, in the interest of alleviation of economic distress owing to the economic depression, encourage monopoly in agricultural commodities and, in fact, put the control of such commodities and the creation of such monopolies under the exclusive executive and administrative jurisdiction of the Secretary of Agriculture. Is the Government, then, to be permitted to compel citizens to become a part of a monopoly through its executive orders, and then, at the same time, indict them under the Sherman Act? Here, then, is the repugnancy.

To sustain its theory that conspiracies may be subject to prosecution under the Sherman Act without regard to the peculiar power of control and regulation which is vested in some administrative agency by another statute, Gov. brf., p. 63, cites the following decisions:

United States v. *Pacific & Arctic Ry. Co.*, 228 U. S. 87;

United States v. *Union Pacific R. R. Co.*, 226 U. S. 61;

United States v. *Joint Traffic Association*, 171 U. S. 505;

United States v. *Trans-Missouri Freight Association*, 166 U. S. 290.

Obviously, acquisition of the capital stock of a competing railroad, or agreements between railroads as to distribution of freight or passenger traffic, involved in the above four cases, presented an entirely different situation from that in the case at bar, especially in view of the course of amendment of the Interstate Commerce Commission legislation, and the construction of the Agricultural Marketing Agreement Act of 1937, which substantially reenacts and confirms the provisions of the 1933 Agricultural

Adjustment Act, as amended in 1935, in the *Rock Royal Cooperative, Inc.* case.

In *Great Northern Railway Company* v. *Merchants Elevator Company*, 259 U. S. 285, Mr. Justice Brandeis, in delivering the unanimous opinion of the Court, holding that a preliminary resort to the Interstate Commerce Commission for its decision is not essential to support the jurisdiction of the courts over cases involving a disputed question of construction of an interstate tariff, where no fact, evidential or ultimate, is in controversy, at p. 295, says:

> "If, in examining the cases referred to, there is borne in mind the distinction above discussed between controversies which involve only questions of law and those which involve issues essentially of fact or call for the exercise of administrative discretion, it will be found that the conflict described does not exist and that the decisions referred to are in harmony also with reason."

In support of that statement, the learned Justice, in footnote 2, presents a most elaborate review of the authorities, first as to those allowing invocation of judicial power without preliminary resort to the Commission, and secondly, those where the courts have refused to take jurisdiction because there had not been preliminary resort to the Commission and the question presented either was one of fact or called for the exercise of administrative discretion.

The four cases:

(*United States* v. *Pacific & Arctic Ry. Co.*, 228 U. S. 87;

United States v. *Union Pacific R. R. Co.*, 226 U. S. 61;

United States v. *Joint Traffic Association*, 171 U. S. 505;

United States v. *Trans-Missouri Freight Association*, 166 U. S. 290.)

relied upon by the Government do not involve discretionary fact-finding powers of the Interstate Commerce Commission, but involve pure constructions of questions of law; and observe that sections 8, 9 and 22 of the Interstate Commerce Acts expressly reserve jurisdiction in the courts on certain contingencies (U.S.C. Tit. 49, secs. 8, 9, 22).

As we shall presently demonstrate, the Agricultural Acts here involved contain no such provision for optional or alternative remedy by recourse to the courts.

The powers of the several district courts of the United States, with reference to agricultural commodities and those engaged in the production and handling thereof, are specifically limited by U. S. C. Tit. 7, sec. 608a(6),(7). For convenience, we subjoin said sections:

> **"(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this chapter, in any proceeding now pending or hereafter brought in said courts."**
>
> **"(7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several district attorneys of the United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this chapter. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto issued pursuant to this title the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the Attorney General for appropriate action."**

These two sections are decisive of the fact that initial judicial power of the several district courts of the United

States, with reference to agricultural commodities and those engaged in the production and handling thereof, was, in fact, carved from and that there is no concurrent jurisdiction existing between the district court and the Secretary of Agriculture.

The Act very specifically provides that the jurisdiction of the district courts must be invoked by the Secretary of Agriculture, himself, as is provided in U. S. C., Tit. 7, sec. 608a(7), and in no other manner. The condition precedent to invocation of the jurisdiction of the district court by the Secretary of Agriculture, himself, is specifically provided for in the two-fold provision of subsection 608a(7): First, by referring the matter to the district attorney, under the direction of the Attorney General; and, second, to refer the matter to the Attorney General for appropriate action.

Should the Secretary of Agriculture fail to invoke the jurisdiction of the district court in this manner, the district court would be powerless to act.

Nowhere in the indictment is it alleged that the Secretary of Agriculture ever had any hearings, issued any orders, made findings that there were violations of any of his orders, had requested the district attorney, under the direction of the Attorney General, to institute proceedings, or had referred the subject matter to the Attorney General for appropriate action.

The district court was correct in its conclusion that it did not have jurisdiction. There was therefore no justiciable controversy before the district court, and the appeal prosecuted by the Government from the judgment entered in the proceedings is an appeal from a non-justiciable subject matter.

Nothing set forth in Counts 1, 2 and 4 of the indictment

relates to a subject matter that does not involve a fact-finding question or an administrative question, solely within the exclusive and plenary executive jurisdiction of the Secretary of Agriculture.

In the recent case of *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, Mr. Justice Frankfurter, after an exhaustive review of the authorities as to collision of the judicial power and the jurisdiction of the Interstate Commerce Commission, at p. 139, says:

> "From these general considerations, the Court evolved two specific doctrines, limiting judicial review of the orders of the Interstate Commerce Commission. One is the primary jurisdiction doctrine, firmly established in *Texas & P. R. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426. Thereby, matters which call for technical knowledge pertaining to transportation must first be passed upon by the Interstate Commerce Commission before a court can be invoked. The other is the doctrine of administrative finality. Even when resort to courts can be had to review a Commission's order, the range of issues open to review is narrow. Only questions affecting constitutional power, statutory authority, and the basic prerequisites of proof, can be raised. If these legal tests are satisfied, the Commission's order becomes incontestable. *Interstate Commerce Commission* v. *Illinois C. R. Co.*, 215 U. S. 452, 470; *Interstate Commerce Commission* v. *Union P. R. Co.*, 222 U. S. 541."

Bearing these considerations in mind, let us proceed to analyze the four authorities relied upon by the Government (Gov. Brf., p. 63) in support of its theory that the conspiracy charged, relating to a subject matter involving exclusive fact-finding and administrative power of the Secretary of Agriculture, has not been removed from initial judicial power of the District Court.

1. United States v. Pacific & Arctic Ry. Co., 228 U. S. 87:

This case came on writ of error to the District Court for Alaska to review to judgment sustaining demurrers to an indictment charging violations of the Antitrust and Interstate Commerce laws, wherein the district court held that the first five counts were fatally defective in that the conduct of the defendants was not subject to judicial review in a criminal or civil case until it had been submitted to and passed upon by the Interstate Commerce Commission.

The third, fourth and fifth counts were under the Interstate Commerce Laws and counts one and two were under the Antitrust Laws. This Court affirmed the holding of the District Court as to counts three, four and five, on the ground that exclusive administrative jurisdiction was in the Interstate Commerce Commission, but disagreed with the district court as to counts one and two under the Antitrust Laws, which said counts one and two contained no subject matter over which exclusive jurisdiction had been devolved upon the Interstate Commerce Commission. So that the utmost comfort that the Government may derive from that case is that the counts under the Sherman Act were joined with counts under the Interstate Commerce Laws and the counts under the Interstate Commerce Laws were held subject to demurrer because of invasion of the exclusive administrative jurisdiction of the Interstate Commerce Commission.

2. United States v. Union Pacific R. R. Co., 226 U. S. 61:

This case involved the purchase by the Union Pacific Railway Company of 46 per cent of the stock of the Southern Pacific Company, with the resulting control of the latter's railway system by the former.

The point of invasion of the jurisdiction of the Interstate Commerce Commission is not raised nor discussed, nor is it shown that any statute applicable to the Interstate Commerce Commission at the time of said case (which was decided in December, 1912), conferred upon the Interstate Commerce Commission any jurisdiction over the acquisition of stock of competing railroads.

3. United States v. Joint Traffic Association, 171 U. S. 505:

In this case, thirty-one railroad companies, engaged in transportation between Chicago and the Atlantic coast, formed an association by which they agreed that said association should have jurisdiction over competitive traffic, with certain exceptions. It was specifically agreed that the power so conferred upon the managers should be so construed and exercised as not to permit violation of the Interstate Commerce Act and that the managers should cooperate with the Interstate Commerce Commission to insure and obtain stability and uniformity in rates, fares and charges.

The alleged conspiracy related to matters collateral to the subject matter devolved upon the Interstate Commerce Commission as an administrative tribunal. But what has that situation to do with the case at bar, where the very subject matter set forth in Counts 1, 2 and 4, was under the supreme and exclusive control of the Secretary of Agriculture, since the Agricultural Adjustment Act of 1933, and at the very time the several conspiracies set forth in said counts are charged to have been formed, these Appellees were, in fact, operating and functioning under License 30 issued by the Secretary of Agriculture? Under said License 30, the Secretary of Agriculture had the sole, exclusive and plenary jurisdiction to pass upon the terms and conditions of handling,

producing and distributing of milk within the Chicago Milk Shed—a jurisdiction found by this Court, in the *Rock Royal Cooperative* case to be a valid investiture of jurisdiction, extending to this very day.

4. United States v. Trans-Missouri Freight Association, 166 U. S. 290:

That case involved a freight association and is inapplicable for the several reasons last above stated. But observe the following language at p. 318, which gives answer to the lengthy excerpts from the Congressional Record appearing in the Government's brief in the instant case:

> "All that can be determined from the debates and reports is that various members had various views, and we are left to determine the meaning of this act as we determine the meaning of other acts from the language used therein.
>
> "There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. *United States* v. *Union Pacific Railroad Company*, 91 U. S. 72, 79; *Aldridge* v. *Williams*, 3 How. 9, 24, Taney, Chief Justice; *Mitchell* v. *Great Works Milling & Manufacturing Company*, 2 Story, 648, 653; *Queen* v. *Hertford College*, 3 Q. B. D. 693, 707.
>
> "The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed."

There is therefore no foundation for the statement, appearing at p. 63 of the Government's brief, "Although the Interstate Commerce Act embodies a remedial system that is complete and self-contained, the Sherman Act, in all of these cases, was held to apply, notwithstanding the jurisdiction of the Interstate Commerce Commission, on the theory that the Sherman Act and the Interstate Commerce Act are wholly independent of each other."

Observe that none of the Agricultural Acts since 1933 contain a provision such as section 22 of Title 49, U. S. C., conferring alternate or optional jurisdiction as between the Interstate Commerce Commission and the courts, as pointed out in *United States Navigation Co.* v. *Cunard SS. Co.*, 284 U. S. 474, wherein the Court, in pointing out that the provisions of the Shipping Board Act were more stringent than those of the Sherman Act, at p. 485, says:

> "The matter, therefore, is within the exclusive preliminary jurisdiction of the Shipping Board. The scope and evident purpose of the Shipping Act, as in the case of the Interstate Commerce Act, are demonstrative of this conclusion. Indeed, if there be a difference, the conclusion as to the first named act rests upon stronger ground, since the decisions of this court compelling a preliminary resort to the commission were made in the face of a clause in § 22 of the Interstate Commerce Act, that nothing therein contained should in any way abridge or alter existing common law or statutory remedies, but that the provisions of the act were in addition to such remedies (*Mitchell Coal Co.* v. *Pennsylvania R. Co.*, 230 U. S. 247, 256); a clause that finds no counterpart in the Shipping Act."

C. As to the Government's contention that none of the statutes enacted since the Sherman Act exempt agricultural products from the operation of said Sherman Act.

The Government's plaint is that the district court, in its opinion, referred to a general policy of legislation affecting agriculture, and referred to section 17 of the Clayton Act, the Capper-Volstead Act, and the Cooperative Marketing Act.

The Appellees filing this brief are not agricultural associations, and are therefore excluded from the operation of said Acts; particularly as we did not contend in the lower court that jurisdiction over the handlers (distributors) was carved away from initial judicial power by any legislation other than the Agricultural Adjustment Act of 1933, as amended in 1935, and the Agricultural Marketing Agreement Act of 1937.

D. As to the Government's contention that the Marketing Agreement Act, taken as a whole, does not exempt agricultural products from the operations of the Sherman Act.

The theme of the Government's argument is that the view expressed in the opinion of the district court "ignores the limited purposes of the Marketing Agreement Act."

In support of that theory, the Government urges that the Constitution vests in Congress "complete and plenary power over interstate and foreign commerce." But the learned counsel for the Government overlooked the fact that Article III, Section 1, of the Constitution of the United States vests in Congress complete and plenary power to ordain and establish inferior courts.

At p. 24, *ante,* we respectfully submit that we have demonstrated that the district courts, being courts of special and limited jurisdiction, created by Congress, are subject to any limitation of classes of subject matter over which such courts may assert initial judicial power. Our contention is that Congress, in order to protect and advance interstate commerce, and to adopt measures to promote its growth, and to foster, protect, and control same, enacted the Agricultural Adjustment Act of 1933, the amendment thereto of 1935, and the Agricultural Marketing Agreement Act of 1937. In other words, the carving of initial judicial power, effected by such Agricultural Acts, was for the protection of interstate commerce. Wherefore the Government's argument in this connection begs the question submitted for review.

Parenthetically, it should be observed that the Government admits that "to some extent", these methods are inconsistent with the completely free competitive enterprise contemplated by the Sherman Act. To that extent, and to that extent alone, the Marketing Agreement Act provides that the Sherman Act shall not apply. Nothing in the Marketing Agreement Act sustains a broader exemption." That admission is made by the Government in the face of the plain provisions of the 1937 Agricultural Marketing Agreement Act, which reenacted and confirmed the earlier provisions of the 1933 and 1935 Acts, which expressly gives power to the Secretary of Agriculture to institute investigations, conduct hearings and enter orders, independently of marketing agreements.

In any view of the Government's admission that some executive and administrative power is vested in the Secretary of Agriculture over the subject matter contained in the respective counts of the indictment, no jus-

ticiable controversy is presented because of the elementary fact that partnerships between the executive department and the judicial department do not comport with our Constitutional system. The extent of the interest of the partners to such a partnership and jurisdiction is immaterial for, if any substantial jurisdiction of a subject matter is in one department, all jurisdiction is removed from the other department.

The declared policy of the Marketing Agreement Act is inconsistent with the policy of the Sherman Act.

The Government quotes section 1 of the Marketing Agreement Act and follows same with the observation that (Gov. brf., p. 44) the condition sought to be met is a limited condition, affecting primarily the purchasing power of farmers.

We submit that the plain language of section 1, "and that these conditions affect transactions in agricultural commodities," in view of the innumerable references to handlers, as well as to producers, contained in the Act, precludes the narrow construction sought to be placed upon the Act merely because of the incidental use of the expression "impairs the purchasing power of farmers," in the light of a context, not only in said section 1, but throughout the lengthy provisions of the Act, that the sole purpose of the 1937 legislation was to concern itself with the purchasing power of farmers.

Similarly with the construction sought to be placed upon section 2 of the 1937 Act, wherein the Government's brief, p. 45, curiously states: "Congress limits that purpose by stating also its purpose to protect the interests of consumers by approaching the desired level of prices only gradually and by expressly stating that it authorizes

no action designed to maintain prices to farmers above the specified level." As to which the Government's brief concludes (p. 45): "Taken together, these purposes clearly limit the regulation authorized to action designed to increase the purchasing power of farmers by maintaining adequate prices for their products."

Does not that admission call for an affirmance of the judgment appealed from? Could there be a more specific demonstration that the entire subject matter of the indictment is within the exclusive jurisdiction of the Secretary of Agriculture because of the very reasons relied upon by the Government to exclude exclusive executive jurisdiction?

It was not necessary for Congress to have provided a complete substitute for the prevention "of all evils affecting interstate commerce in agricultural commodities, which might result from the combinations and conspiracies made illegal by the Sherman Act." The fact is, Congress acted; and that it did act within its Constitutional power (*Rock Royal* and *Hood* cases.)

With the wisdom of that legislation, the courts are not concerned. It may well be that Congress, at some future date, may amend the Agricultural Marketing Agreement Act of 1937, just as said 1937 Act is an amendment of the 1933 Act, as amended by the 1935 Act.

To support its theory, the Government's brief continues (p. 39): "The acts charged in the indictment were committed at a time when there was no marketing agreement or order in effect in the Chicago market" by which the Appellant seeks advantage from the fact that the Secretary of Agriculture, from and after his cancellation of License 30 for the Chicago Milk Marketing Area, on March 2, 1935, did not again take con-

trol of said Chicago Area until September 1, 1939; see Federal Register Marketing Order No. 41, Vol. 4, pages 3764-3768, 3770, of August 30, 1939, after the date of the judgment appealed from, and that, during the interregnum, the Secretary of Agriculture did not see fit to exercise the exclusive, mandatory executive jurisdiction devolved upon him by Congress—that, for that reason alone, such executive jurisdiction should be ignored.

The Government has not cited any cases in support of its theory that exclusive executive jurisdiction, vested by valid Act of Congress in an executive officer, may be ignored by such executive officer, with the effect of repealing the Act conferring such jurisdiction upon him. Appellees are not to blame for the nonfeasance of the Secretary of Agriculture, nor can such nonfeasance be made the basis of a rule of construction of the executive powers vested in such Secretary.

We submit the above observations because of our theory that the several Agricultural Marketing Agreement Acts cover a two-fold subject matter: (1) The duty of the Secretary of Agriculture to conduct investigations, hold hearings and enter orders; (2) the duty of the Secretary of Agriculture, separately considered, as to entering into, etc., of marketing agreements. Up to the date of the entry of the judgment herein (August 28, 1939), and since March 2, 1935, the Secretary of Agriculture saw fit not to exercise his jurisdiction to investigate, conduct hearings and enter orders with reference to the Chicago Milk Marketing Area throughout, as shown by the Federal Register, he did enter such orders in other milk marketing areas; and this Court may judicially notice that the Secretary of Agriculture, during that

period, exerted exclusive administrative control over some twenty milk marketing areas throughout the country.*

The methods provided by the Agricultural Acts, beginning with 1933, for regulation of Interstate Commerce in agricultural commodities disclose a congressional intention to exempt agricultural products from the operation of the Sherman Act.

Under this subheading, the Government seeks to limit the executive jurisdiction of the Secretary of Agriculture to enter orders, to cases of a marketing agreement executed only after notice and a public hearing and that "no power is given to the Secretary to initiate a marketing agreement, nor can he force members of the industry to enter such an agreement." In support of that contention, the Government cites *United States* v. *Rock Royal.*

The Government, throughout its entire brief, has discussed the 1937 Agricultural Marketing Agreement Act as if it were the controlling law in existence during the month of January, 1935, affecting the subject matter of the indictment; but, as the respective counts of the indictment charge the formation of a conspiracy in the month of January, 1935, and that said conspiracy continued to the date of the return of the indictment, viz., November 1, 1938, the indictment period must be divided into three segments: The first segment beginning with the month of January, 1935 and continuing until the amendatory Act of

* See Fed. Reg. for March 8, 1939, for notice of hearing with reference to Kansas City Marketing Area; order sustaining operation of License for Milk in Fall River, Massachusetts Sales Area on April 23, 1936, Fed. Reg. Vol. 1, p. 264, and notice appearing with reference to said Fall River Area at p. 347 of the same volume, which references are typical of many to be found in the Federal Register in practically the identical language.

August, 1935; the second segment beginning with the amendatory Act of August, 1935, and continuing to the enactment of the Agricultural Marketing Agreement Act of June, 1935; and the third segment beginning with the enactment of the Agricultural Marketing Agreement Act of June, 1937, and continuing to the date of the return of the indictment, viz., November 1, 1938.

In January of 1935—the 1933 Act then controlling—the Secretary of Agriculture had in full force and effect in the Chicago Milk Marketing Area License No. 30, said license having been issued by the Secretary of Agriculture on May 31, 1934, effective June 1, 1934; amended June 30, 1934, effective July 1, 1934; amended July 17, 1934, effective July 18, 1934; amended August 21, 1934, effective August 22, 1934; amended October 30, 1934, effective November 1, 1934; amended December 1, 1934, effective December 2, 1934; and amended January 16, 1935, effective January 17, 1935. (It will be noted that the last mentioned amendment was the January of 1935 in which the indictment alleges the formation of the conspiracy which is herein involved (See Appendix A, p. 73).)

The Secretary of Agriculture imposed said License 30 and its amendments upon the Chicago Sales Area, without the consent of anyone affected thereby, pursuant to the provisions of section 8(3) of the Agricultural Adjustment Act of 1933, viz.:

> "In order to effectuate the declared policy, the Secretary of Agriculture shall have power: * * *
>
> "(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling in the current of interstate or foreign commerce of any agricultural commodity or product thereof, or any competing commodity or product

thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing acts of Congress or regulations pursuant thereto, as may be necessary to *eliminate unfair practices* or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof. * * *"

Observe the recital in the last above quoted excerpt: "unfair practices"—could there be a more specific demonstration that it was intended by Congress that the Secretary of Agriculture be vested with full and exclusive jurisdiction to prevent action or conduct within the Chicago Sales Area of a nature connoted with agreements, combinations or conspiracies affecting trade or commerce? What is a conspiracy within the purview of section 1 of the Sherman Act but a combination to engage in "unfair practices affecting interstate commerce"?

Nowhere in the provisions of the Agricultural Adjustment Act of 1933 can be found any restriction upon the exclusive, supreme and plenary jurisdiction of the Secretary of Agriculture administratively to restrain unfair practices, thus striking at the very root or source of formation of any agreement, combination or conspiracy involving unfair practices relating to agricultural commodities or products thereof.

Likewise will it be noted that the Secretary of Agriculture, under the 1933 Agricultural Adjustment Act, is not required to obtain the consent of producers or others engaged in the handling of agricultural commodities, as a condition precedent to his administrative jurisdiction to impose licenses which completely control processors, associations of producers, and those engaged in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof. The license

was, in fact, an order, as the 1935 amendatory Act changes the term "license" to "order". So that this Honorable Court will note that License 30, with its array of amendments, really constitutes an executive or administrative order and the series of amendments to said order, all within the exclusive executive jurisdiction of the Secretary of Agriculture.

Thus is conclusively demonstrated that, at the very date set as the commencement of the conspiracy—a date, for purposes of demurrer, conclusive and binding upon the Government as distinguished from the effect of a date of judgment on trial of the merits—the exclusive jurisdiction of the Secretary of Agriculture not only existed as a supreme power but, on the said very date, the Secretary was actually exercising such exclusive and supreme jurisdiction. The indictment thus presents the anomalous and forbidden picture of a concurrent exercise of initial judicial power over a subject matter devolved by Congress to exclusive executive or administrative jurisdiction. This, of itself, is a complete answer to the contention of the Government that no power is given to the Secretary to initiate a marketing agreement, nor can he force members of the industry to enter into such an agreement. The entering into agreements is beside the point—that is only a portion of his jurisdictional powers. But note that section 8(2) of the Agricultural Adjustment Act of 1933 provides:

> "In order to effectuate the declared policy, the Secretary of Agriculture shall have power: * * *
>
> (2) To enter into marketing agreements with processors, associations of producers, and others engaged in the handling in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, after due notice and opportunity for hearing to interested parties. * * *"

That section is complete authority for the Secretary of Agriculture even to initiate marketing agreements.

We shall proceed to demonstrate that the scope of the 1935 and the 1937 Acts is not limited to steps relating to voluntary marketing agreements, but reaches every step of executive jurisdiction over agricultural products, including milk. Numerous mandatory provisions appear, which require the entry of orders after hearing. There are likewise mandatory duty provisions which require the Secretary to initiate investigations into conditions affecting agricultural commodities, including milk, separate and apart from the cases involving voluntary marketing agreements.

Nowhere in the *Rock Royal* or in the *Hood* case did this Court, as we understand said decisions, announce any limitation of the authority and jurisdiction of the Secretary of Agriculture to instances of voluntary marketing agreements.

Section 608 of Title 7 of the U. S. Code, now part of the Agricultural Agreement Act, has substantially been in the same language since the 1933 Act. To quote same:

> "(1). *Investigations; proclamation of findings.* Whenever the Secretary of Agriculture has reason to believe that:
>
> (a) The current average farm price for any basic agricultural commodity is less than the fair exchange value thereof, or the average farm price of such commodity is likely to be less than the fair exchange value thereof for the period in which the production of such commodity during the current or next succeeding marketing year is normally marketed, and
>
> (b) The conditions of and factors relating to the production, marketing, and consumption of such commodity are such that the exercise of any one or more of the powers conferred upon the

> Secretary under subsections (2) and (3) of this section would tend to effectuate the declared policy of this chapter,
>
> he shall cause an immediate investigation to be made to determine such facts. If, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such determination and shall exercise such one or more of the powers conferred upon him under subsections (2) and (3) of this section as he finds, upon the basis of an investigation, administratively practicable and best calculated to effectuate the declared policy of this chapter."

Nothing in that language indicates a limitation of the jurisdiction of the Secretary of Agriculture to passing upon voluntary marketing agreements.

Mr. Justice Reed, in reviewing the several sections of the 1937 Act, in the *Rock Royal* case, at p. ..., says:

> "Section 8a(6) gives jurisdiction to the District Courts of the United States to enforce, and to prevent and restrain any person from violating, any of the orders, regulations or agreements under its provisions."

In the light of the specific grant of executive power involved in the last quoted section, and the declaration of policy by Congress in each of said Acts, consider the provisions of sec. 610 of Tit. 7, particularly the language found in sec. (a), relating to the powers of the Secretary generally, as to the employment of clerks and the compensation, etc. Note in said sec. 610 the significant language:

> "'* * * which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this chapter.'"

Section 608c, par. (1), relating to orders, recites: "The Secretary of Agriculture shall * * *"—observe that the statute does not say "may," but specifically says "shall,"

meaning a mandatory duty—"* * * subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section."

Could there be a more specific definition of a complete control over agricultural commodities and those engaged therein than that shown to be vested in the Secretary of Agriculture, even to the extent of rule-making power having the force and effect of a statute, and administrative power evidenced by the entry of orders having the force and effect of law?

Significant, likewise, is the fact that Congress used the term "shall" in connection with the exercise of this power, thereby to exclude the thought that the Secretary be vested with a discretionary power which might be implied from the use of the word "may"; but Congress used the word "shall," meaning mandatory, and not the word "may," meaning discretionary. Had it been the intention of Congress to make the functions of the Secretary of Agriculture *purely advisory* and *not supreme and exclusive*, why the specific provision in paragraph (c) of section 610, conferring upon the Secretary of Agriculture power to promulgate rules having the force and effect of statutes? Why did Congress interfere with the jurisdiction of the court by conferring upon the Secretary the power to enter orders superseding the initial judicial power if it was not intended to give the Secretary original and complete jurisdiction?

Reverting to sec. 608, subsec. 1, note that the recital is not that if the Secretary, in his discretion, is of the opinion that there is anything wrong in this market that he shall institute investigation, but that the mandatory

duty is devolved upon the Secretary to investigate, as witness the recital of the section: "He shall cause an immediate investigation to be made to determine such facts; and if, upon the basis of such investigation, the Secretary finds the existence of such facts, he shall proclaim such determination and shall exercise one or more of the powers conferred upon him."

Under the Agricultural Adjustment Act of 1933, the Secretary of Agriculture was not limited in the issue of licenses to voluntary marketing agreements with or without referenda, but had exclusive and plenary jurisdiction over agricultural commodities, including milk, in the complete domain of such commodities in all instances, separate and apart from marketing agreements. In other words, the Secretary stepped into any area, the territorial boundaries whereof he, himself, fixed and determined; and over such area took exclusive administrative jurisdiction.

The 1935 amendment of the 1933 Act changed the term "license" to "order" in instances to cover the Secretary's exercise of jurisdiction over a milk shed or milk marketing area, the territorial limits whereof had been fixed by him. The 1937 Agricultural Marketing Agreement Act reenacted and confirmed the provisions of the two earlier Acts and provided that, in case of marketing agreements, the Secretary had the optional and discretional power to submit question of the marketing order to referendum, but the Secretary is under no mandatory duty to submit any marketing order, whether voluntary or involuntary, to a referendum.

Let us proceed mathematically to demonstrate that the provision as to referendum, upon which the Government places its principal reliance, is not compulsory upon the Secretary and is not controlling of his jurisdictional powers, but is expressly and specifically defined by the

words "*may conduct a referendum among producers,*" and not by the words "shall conduct a referendum among producers."

Thus will be demonstrated, by an examination of the pertinent sections of the Agricultural Adjustment Acts to which we now come, that full, complete, supreme and plenary jurisdiction over agricultural commodities, including milk, is vested in the Secretary of Agriculture, and that the exercise of such jurisdiction by the Secretary of Agriculture is not restricted to the approval of any person engaged in the production, marketing or handling of agricultural commodities, including milk.

To demonstrate that such exclusive, supreme and plenary jurisdiction is vested in the Secretary of Agriculture by the Agricultural Marketing Acts, beginning with the 1933 Act, as amended in 1935 and 1937, the following sections are conclusive: In sec. 608c, U.S.C., Tit. 7, will be noted the following language:

> "(1) The Secretary of Agriculture *shall*, subject to the provisions of this section, *issue*, and from time to time *amend, orders* applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. * * *"
>
> "(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this chapter with respect to any commodity or product thereof specified in subsection (2) of this section, he *shall* give due notice of and an opportunity for a hearing upon a proposed order."

Under this subsection (3), it will be noted that the Secretary of Agriculture, alone, is the one to determine whether or not he has reason to believe that the issuance of such an order will tend to effect the declared policy of the

law. It is clear that the Secretary, in reaching such a conclusion, does not have to consult with anyone.

> "(4) After such notice and opportunity for hearing, the Secretary of Agriculture *shall* issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing * * * that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this chapter with respect to such commodity."

There is no restriction placed upon the Secretary of Agriculture by the preceding subsection (4) as to the character of evidence, the sufficiency thereof, or the method by which such evidence be introduced at the hearing. So long as a notice has been given and an opportunity for hearing is had, the law is complied with whether or not anyone attended the hearing. This subsection does not prohibit the Secretary of Agriculture from introducing any kind of evidence which he desires. A bare statement into the record by even one witness (who could be the Secretary of Agriculture), without corroboration, to the effect that the contemplated order was approved or favored by the requisite number of producers, would be sufficient authority for the issuance of a marketing order by the Secretary. Upon such evidence the Secretary is not required to submit by referendum to the producers the question of such approval or favoring.

Section 608c in subsection (19) provides:

> "(19) For the purpose of ascertaining whether the issuance of an order is approved or favored by producers, as required under the applicable provisions of this chapter, the Secretary *may* conduct a referendum among producers. * * *"

This section does not require the Secretary to conduct a referendum among producers at all. If it had been intended by Congress that the Secretary of Agriculture could not issue orders without the approval of the requisite

number of producers, it would have provided that the Secretary "*shall* conduct a referendum among producers." The question of the issuance of an order is completely within the control of the Secretary of Agriculture.

Under the provisions of subsection (4), even though the hearing provided for may be perfunctory, and even though the evidence introduced be nothing more than a statement into the record by the Secretary of Agriculture, or his representative, that the issuance of such order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the law with respect to agricultural commodities, including milk; and if, in addition thereto, there is a perfunctory statement that such order is approved or favored by the requisite number of producers, then the requirements of subsection (9) are complied with, viz.:

> "(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers * * * of more than 50 per centum of the volume of the commodity or product thereof * * * to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines:
>
> "(A) That the refusal or failure to sign a marketing agreement * * * by the handlers * * * of more than 50 per centum of the volume of the commodity or product thereof * * * tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and
>
> "(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:
>
> "(i) By at least two-thirds of the producers. * * *"

It is apparent that if there is any evidence offered at the time of the hearing in connection with such order,

that the order is approved or favored by the requisite number of the producers, the Secretary is empowered, by subsec. (4), sec. 608c, Tit. 7, U.S.C., to issue the order. In fact, the subsection provides that the Secretary of Agriculture shall issue such an order if he finds, and sets forth in the order, upon the evidence introduced at such hearing, that the issuance of such order will tend to effectuate the declared policy of the law.

The only significance of the provisions of subsec. (19) is that, if the Secretary did not want to assume full responsibility for the issuance of an order in any given marketing area, he could order a referendum if he so saw fit, but the mere fact that the Secretary may conduct a referendum among producers as provided in said subsection, does not prevent the exercise of full and complete jurisdiction over agricultural commodities, including milk, by the Secretary, if he sees fit so to do. The fact remains that the absolute power is in the Secretary to issue such an order without the approval of the handler or the producer. If, for example, the Secretary determined, in his own mind, that the issuance of such an order was necessary to effectuate the declared policy of the law within any given marketing area, he could cause to be introduced in evidence, at the hearing in connection with such order, any evidence to the effect that the issuance of such order, and all of the terms and conditions thereof, will tend to effectuate the declared policy and that the issuance of such order is approved or favored by the requisite number of producers; whereupon he could completely disregard any evidence to the contrary. The Secretary alone is empowered, under the provisions of the Act, to make findings in connection with the evidence introduced at the hearing.

Subsection (4) specifically says: "The Secretary of

Agriculture shall issue an order *if he finds*, and sets forth in such order, *upon the evidence introduced at such hearing* * * *" that the issuance of the order will tend to effectuate the declared policy of the Act. It is to be assumed that evidence caused to be introduced by the Secretary would be of controlling weight in his mind in reaching a finding, over testimony introduced by others which might be contrary to the effect of the evidence caused to be introduced by the Secretary. It is thus clear that the Secretary of Agriculture is in complete control of (1) reason to believe that the issuance of an order will tend to effectuate the declared policy of the law; (2) what is to be set forth in the order; (3) the finding of facts to be adduced from evidence introduced at the hearing relating to such an order; and, finally, that the issuance of such an order will tend to effectuate the declared policy of the law. The only way that such a finding can be challenged by anyone is under the provisions of sec. 608c (15)(A), Tit. 7, U. S. C.:

> "Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, *in accordance with regulations made by the Secretary of Agriculture, with the approval of the President.* After such hearing, the Secretary shall make a ruling upon the prayer of such petition, which shall be final, if in accordance with law."

It will be noted that the penal provisions of said Act are set forth in sec. 608c(14), Tit. 7, U. S. C.:

> "Any handler subject to an order issued under this section, or any officer, director, agent, or employee of

> such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than $50 or more than $500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: * * *"

It is significant that there is no provision under the law by which producers can challenge a finding by the Secretary of Agriculture that such order was approved or favored by the requisite number of producers.

To show the further absolute jurisdiction placed in the Secretary of Agriculture, sec. 608c(16)(A), Tit. 7, U. S. C. provides:

> "The Secretary of Agriculture *shall, whenever he finds* that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof."

So that the Court will note that the argument in the Government's brief that the Secretary is empowered to terminate an order or suspend its operation only when such termination is favored by a majority of the producers affected by the program, is contradicted by the plain provision of the Act, and that the Government's reliance is based upon sec. 608c(16)(B), Tit. 7, U. S. C., wherein it is provided that, if the termination of an agreement or an order is favored by a majority of the producers, at the end of the then current marketing period for such commodity, the Secretary shall terminate such marketing agreement or order. But this case does not fall under that category, in that subsec. (16)(A) contains no such limitation.

The above recapitulation of the applicable provisions shows that the Government's argument that the powers

conferred upon the Secretary are not self-executing but depend upon the approval of the producers and handlers of the commodity subject to the order, is not borne out from the plain language of the Act above summarized. Obviously, no law is self-executing. The execution must be by some individual, *i. e.*, the officer charged with the duty of executing the provisions of the law.

As already stated, it is not for this Court to weigh the quantum of jurisdiction devolved upon the Secretary of Agriculture over agricultural commodities or milk. If it appears—and the Government has, in fact, substantially so admitted—that the Secretary has some material and substantial jurisdiction in the premises, both administrative and for the entry of orders in connection with which penalties are provided by the plain provisions of the Act, the argument of the Government falls of its own weight, for, in its last analysis, it amounts to the assertion of a claim that there is partnership of jurisdiction between the executive department and the judicial department—a partnership forbidden by the Constitution.

The non-exercise or partial exercise of jurisdiction by the officer to whom the enforcement is committed, does not defeat the jurisdiction vested in such officer. If it were within the power of the officer to abate jurisdiction by the simple device of nonfeasance, the officer, in that event, would become a super-legislative body, with capacity to repeal Acts of Congress, which right is only vested in Congress by the Constitution.

If there be any doubt as to the concession by the Government in this case that some power is vested in the Secretary of Agriculture to regulate agricultural commodities and those engaged in the production and handling thereof under the Agricultural Acts, such doubt is completely dispelled by reference to the *Rock Royal* case,

wherein is found an absolute assertion that there is power in the Secretary of Agriculture to issue orders regulating agricultural commodities, including milk.

The following language of Mr. Justice Reed, in the *Rock Royal* case, is significant in demonstrating how far the Secretary of Agriculture may go in exercising jurisdiction vested in him by the several Agricultural Marketing Acts, even to the extent of creating a monopoly:

> "These associations of producers of milk have a vital interest in the establishment of an efficient marketing system. This adequately explains their interest in securing the adoption of an order believed by them to be favorable for this purpose. If ulterior motives of corporate aggrandizement stimulated their activities, their efforts were not thereby rendered unlawful. If the act and order are otherwise valid, the fact that their effect would be to give cooperatives a monopoly of the market would not violate the Sherman Act or justify the refusal of the injunction."

The Government contends that, if Congress had intended to confer complete exemption from the operation of the Sherman Act upon production and marketing of agricultural commodities, it would have done so by clear and explicit language. The plain answer to that contention is that, in sec. 608b (U. S. C., Tit. 7), in force since the original Agricultural Adjustment Act of May 12, 1933, c. 25 (48 Stat. L. 34) Tit. I, sec. 8(2), as renumbered 8b and amended August 24, 1935, c. 641, sec. 4, 49 Stat. L. 753; as amended June 3, 1937, c. 296, sec. 1, 50 Stat. L. 246, by the following specific provision. The Congress expressly exempted agreements entered into between the producers and the Secretary of Agriculture from the operation of the Antitrust Laws. To quote sec. 608b:

> "In order to effectuate the declared policy of this chapter, the Secretary of Agriculture shall have the

power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: *Provided,* That no such agreement shall remain in force after the termination of this chapter. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 605 of Title 15. Such loans shall not be in excess of such amounts as may be authorized by the agreements. May 12, 1933, c. 25, Title I, § 8(2), 48 Stat. 34; Apr. 7, 1934, c. 103, § 7, 48 Stat. 528; as renumbered § 8b and amended Aug. 24, 1935, c. 641, § 4, 49 Stat. 753; as amended June 3, 1937, c. 296, § 1, 50 Stat. 246."

The mere reference, in said section 608b, to the exemption from the Antitrust Laws of such agreements, clearly establishes an intention of Congress to completely remove all doubt as to the application of the Sherman Act over agricultural commodities, for it is only agreements in restraint of trade, etc., which are prohibited by the Sherman Act; but the Sherman Act never at any time made it a criminal offense against the United States for any citizen to comply with an order issued by any executive or administrative officer pursuant to statute. Therefore, it was not necessary to provide in the Agricultural Adjustment Act, and as amended, that licenses or orders issued by the Secretary were not within the purview of the Sherman Act, because they never were. The very spirit of the Agricultural Acts, as well as their remedial, if not altruis-

tic nature, precludes the thought that the benign, exclusive exercise of executive and administrative jurisdiction over agricultural commodities in the time of economic calamity did not amount to a carving from the initial judicial power of the district courts. It is a clear demonstration of the intent of Congress to place supervision over production, marketing and handling of agricultural commodities in the hands of a highly specialized department, where the problems of production, marketing and handling of agricultural commodities was thoroughly understood and could be handled by experts, rather than to place such problem in the hands of inexperienced jurors, called to pass upon the technical phases pertaining to the production, etc., of agricultural commodities.

To bolster up its contention that Congress had not intended to exempt the production, etc., of agricultural commodities from the operation of the Sherman Act, the Government proceeds to present a galaxy of excerpts from the Congressional Record. In that process, quotations are presented from debates in each House, all with a view of overriding the plain language of statutes by the then opinion of certain members of each House, which respective opinions, for aught that the Congressional Record discloses, may substantially have been changed and may not have been in the minds of the majority of the members of both Houses when they voted in favor of the enactment. Here, again, the Government answers its contention by citing *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, wherein this Court, in stating the doctrine that debates during the course of the passage of a Bill can not be considered in the construction of a statute, at p. 318, says:

> "All that can be determined from the debates and reports is that various members had various views,

and we are left to determine the meaning of this act, as we determine the meaning of other acts, from the language used therein.

"There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. *United States* v. *Union Pacific Railroad Company*, 91 U. S. 72, 79; *Aldridge* v. *Williams*, 3 How. 9, 24, Taney, Chief Justice; *Mitchell* v. *Great Works Milling & Manufacturing Company*, 2 Story, 648, 653; *Queen* v. *Hertford College*, 3 Q. B. D. 693, 707.

"The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed. * * *"

We fail to see what comfort the Government derives from urging that section 3a of the Marketing Agreement Act, authorizing mediation and arbitration of disputes arising out of the marketing of milk, has any application to the general subject of producers' agreements with the Secretary of Agriculture, necessarily involving third, and even fourth, parties. As shown by the quotation of section 608b in the subheading last above, the very subject matter of this indictment, viz., arrangements between producers and distributors, was under the sole and complete control and dominion of the Secretary of Agriculture, exercising his executive jurisdiction under License 30 in the Chicago Milk Shed, from January 1, 1935 to March 2, 1935, and prior thereto, as this Court may judicially notice and is, indeed, admitted in the Government's brief.

So, too, are we at a loss to understand why the Government departs from the record (Gov. brf., p. 54) to quote a lengthy excerpt from a speech delivered by the Secretary of Agriculture after the rendition of the opinion of the District Court herein. The self-serving public declaration of the Secretary of Agriculture, as set forth by the Government, has no place in the Government's brief. Certainly, the Secretary of Agriculture did not adhere to the view recited in his speech, in view of the fact—which this Court may judicially notice—that he (the same Secretary of Agriculture) did, in fact, exercise the jurisdiction devolved upon him by the Agricultural Act, after the rendition of the judgment appealed from, and did, in fact, on September 1, 1939, actively take complete control of the Chicago Agricultural Marketing Area under his Order No. 41 (Fed. Reg., Vol. 4, pages 3764-3768, 3770, of August 30, 1939).

III.

AS TO THE PURE MILK ASSOCIATION.

Having been advised by counsel for the Pure Milk Association that they intend to fully answer the Government's Point III in their brief, we shall not argue that point here.

IV.

Even if this Honorable Court should be of the opinion that it has appellate jurisdiction and that the district court had jurisdiction of the subject matter, this appeal should nevertheless be dismissed, as it involves a moot controversy and is wanting in present actuality.

This Court will judicially notice that, after the rendition of the judgment appealed from by the Government,

the Secretary of Agriculture, pursuant to authority and jurisdiction devolved upon him by the Agricultural Marketing Agreement Act of 1937, again took jurisdiction of agricultural commodities and those engaged in the production and handling thereof, in the Chicago Milk Marketing Area and has been since, and is now, exercising his said executive and administrative jurisdiction in said area. (See Fed. Reg., Vol. 4, p. 3764-3768, 3770, of August 30, 1939—Marketing Order No. 41, Secretary of Agriculture.)

Parenthetically, it should be noted that the indictment, in each count thereof, charges that the alleged conspiracy was formed in January, 1935; notwithstanding that, during the month of January, 1935, and up to March 2, 1935, these Appellees, in fact, under License No. 30 of the Secretary of Agriculture, operated and were under the sole and exclusive active jurisdiction of the Secretary of Agriculture, as we have already demonstrated.

The subject matter embraced by the allegations of the several counts of the indictment, for the foregoing reasons, presents a moot controversy, wanting in present actuality.

A controversy which has become moot and wanting in present actuality is one which may be judicially noticed by this Court, and such appeal may be dismissed because of such judicial notice. (*Mills* v. *Green*, 159 U. S. 651; *Tennessee* v. *Condon*, 189 U. S. 64, 69; *Wilson* v. *Shaw*, 204 U. S. 24, 30; *Richardson* v. *McChesney*, 218 U. S. 487, 492; *U. S.* v. *Hamburg-A. P. A. G.*, 239 U. S. 466, 475; *U. S.* v. *Alaska S. S. Co.*, 253 U. S. 113, 115; *Able State Bank* v. *Bryan*, 282 U. S. 765, 777; *Gibbes* v. *Zimmerman*, 290 U. S. 326, 331.)

Wherefore, the appeal should be dismissed.

CONCLUSION.

For the several reasons herein presented, it is deferentially urged that the appeal be dismissed, or, in the alternative, that the judgment appealed from be affirmed.

Respectfully submitted,

LOY N. MCINTOSH,
BERNHARDT FRANK,
FREDERICK SECORD,
Counsel for Said Appellees.

GANN, SECORD, STEAD & MCINTOSH,
Of Counsel.

APPENDIX A

Docket No. 1

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

LICENSE SERIES—LICENSE No. 30

LICENSE FOR MILK
CHICAGO SALES AREA
AS AMENDED
WITH THE FOLLOWING EXHIBITS
Exhibit A
Marketing Plan
Exhibit B
Rules for Establishment of Bases

Issued by the Acting Secretary of Agriculture, May 31, 1934. Effective date June 1, 1934 (12:01 a. m., eastern standard time).

LICENSE FOR MILK—CHICAGO SALES AREA, AS AMENDED

WHEREAS, it is provided by Section 8 of the Act as follows:

"Section 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

"(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing Acts of Congress or regulations pursuant thereto, as may be necessary to eliminate unfair prac-

tices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof * * *

"(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade practices and charges, and to keep such systems of accounts, as may be necessary for the purpose of part 2 of this title"; and

WHEREAS, the Secretary, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has, on the third day of February, 1934, issued a License for Milk—Chicago Sales Area; and

WHEREAS, the Secretary has determined to modify the terms and conditions of the aforesaid License;

NOW, THEREFORE, the Secretary of Agriculture, acting under the authority vested in him as aforesaid;

Hereby amends and modifies the terms and conditions of the said License and hereby licenses each and every distributor to engage in the business of distributing, marketing, or handling milk or cream as a distributor in the Chicago Sales Area, subject to the following terms and conditions:

I.

As used in this License as amended (hereafter called the "License") the following words and phrases shall be defined as follows:

A. "Producer" means any person, irrespective of whether any such person is also a distributor, who produces milk in conformity to the applicable health requirements of the Chicago Sales Area for milk to be sold for consumption as whole milk in the Chicago Sales Area.

B. "Distributor" means any of the following persons, irrespective of whether any such person is a producer or an association of producers, wherever located or operating, whether within or without the Chicago Sales Area, engaged in the business of distributing, marketing, or in

any manner handling, in whole or in part, whole milk or cream (including ice cream mix and ice cream) for ultimate consumption in the Chicago Sales Area:

1. Persons,
   (a) who pasteurize, bottle, or process milk or cream;
   (b) who distribute milk or cream at wholesale or retail (1) to hotels, restaurants, stores or other establishments for consumption on the premises, (2) to stores or other establishments for resale, or (3) to consumers;
   (c) who operate stores or other establishments selling milk or cream at retail for consumption off the premises.
2. Persons who purchase, market or handle milk or cream (including ice cream mix and ice cream) for resale in the Chicago Sales Area.

C. "Chicago Sales Area" means and includes the City of Chicago, Illinois, and all of that territory lying within thirty-five miles of the corporate limits of Chicago.

D. "Secretary" means the Secretary of Agriculture of the United States.

E. "Act" means the Agricultural Adjustment Act approved May 12, 1933, as amended.

F. "Person" means individual, partnership, corporation, association or any other business unit.

G. "Subsidiary" means any person of, or over whom or which, a distributor or an affiliate of a distributor has, or several distributors collectively have, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

H. "Affiliate" means any person and/or any subsidiary thereof, who or which has, either directly or indirectly, actual or legal control, of or over a distributor, whether by stock ownership or in any other manner.

I. "Books and Records" means books, records, accounts, contracts, memoranda, documents, papers, correspondence, or other data, pertaining to the business of the person in question.

J. "Market Administrator" means the person designated pursuant to Exhibit A, which is attached hereto and made a part hereof.

II.

1. The schedule governing the prices at which, and the terms and conditions under which, distributors shall purchase and/or accept delivery of milk from producers, shall be that set forth in Exhibit A. Any contract or agreement entered into between any distributor and producer, prior to the effective date of this License, covering the purchase and/or delivery of milk, shall be deemed to be superseded by the terms and provisions of this License in so far as such contract or agreement is inconsistent with any provisions hereof.

2. Except as provided in Exhibit A, no distributor shall purchase milk from producers except: (a) those producers having bases, which are to be reported as provided in Exhibit B, which is attached hereto and made a part hereof; and (b) new producers pursuant to the provisions of Exhibit A.

3. No distributor shall purchase milk from any producer unless such producer authorizes such distributor, with respect to payments for milk purchased from such producer, to comply with the provisions of Exhibit A.

4. (a) The distributors shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he may request, on and in accordance with forms of reports to be supplied by him, for the purposes of (1) assisting the Secretary in the furtherance of his powers and duties with respect to this License and/or (2) enabling the Secretary to ascertain and determine the extent to which the declared policy of the Act and the purposes of this License are being effectuated: such reports to be verified under oath. The Secretary's determination as to the necessity of and the justification for the making of any such reports, and the information called for thereby, shall be final and conclusive.

(b) For the same purposes and/or to enable the Secretary to verify the information furnished him on said forms of reports, all the books and records of each dis-

tributor and the books and records of the affiliates and subsidiaries of each distributor shall, during the usual hours of business, be subject to the examination of the Secretary. The Secretary's determination as to the necessity of and the justification for any such examination shall be final and conclusive.

(c) The distributors and their respective affiliates and subsidiaries shall severally keep books and records which will clearly reflect all the financial transactions of their respective businesses and the financial condition thereof.

(d) All information furnished the Secretary, pursuant to this paragraph, shall remain confidential in accordance with the applicable General Regulations, Agricultural Adjustment Administration.

5. No distributor shall purchase milk or cream from, or process or distribute milk or cream for, or sell milk or cream to, any other distributor who he has notice is violating any provision of this License, without first reporting such violation to the Market Administrator.

6. The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, to act as his representative in connection with any of the powers provided in this License to be exercised by the Secretary.

7. Each distributor who is obligated to report pursuant to paragraph 4 of Section A of Exhibit A shall within thirty days after the effective date of this License, furnish to the Market Administrator a bond with good and sufficient surety thereon, satisfactory to the Market Administrator (in an amount not in excess of the purchase value of the milk purchased by such distributor during any two successive delivery periods as designated by the Market Administrator) for the purpose of securing the fulfillment of such distributor's obligations as provided in Exhibit A. Any distributor who commences to do business after the effective date of this License shall, as a condition precedent to engaging in such business, furnish to the Market Administrator a bond in conformity with the foregoing provision.

The Market Administrator may, (a) if satisfied from the investigation of the financial conditions of a dis-

tributor that such distributor is solvent and/or possessed of sufficient assets to fulfill his said obligations, or (b) if pursuant to a state statute, a distributor has furnished a bond with good and sufficient surety thereon in conformity with the foregoing provision, waive the requirement of the bond as to any such distributor. Such distributor may, upon a change in such circumstances be required by the Market Administrator to comply with the foregoing requirement.

Each distributor who is unable to meet the requirements of the foregoing provisions, shall make deposits with the Market Administrator at such times, in such amounts, and in such manner as the Market Administrator may determine to be necessary in order to secure the fulfillment of such distributor's obligations as provided in Exhibit A.

8. Each and every distributor shall fulfill any and all of his obligations which shall have arisen, or which may hereafter arise in connection with deliveries of milk made pursuant to the License for Milk—Chicago Milk Shed, issued by the Secretary on July 28, 1933, and as amended, and said License for Milk—Chicago Sales Area, issued by the Secretary on February 5, 1934.

9. If the applicability of any provision of this License to any person, circumstance or thing is held invalid, the applicability thereof to any other person, circumstance or thing, shall not be affected thereby, nor shall the validity of the remainder of this License be affected thereby.

If any provision of this License is declared invalid, the validity of the remainder of this License shall not be affected thereby.

10. Nothing herein contained shall be construed in derogation of the right of the Secretary to exercise any powers granted him by the Act, and in accordance with such powers, to act in the premises whenever he shall deem it advisable.

11. This License shall take effect as to every distributor at the time and upon the date set forth herein above the signature of the Secretary.

12. In the event this License is terminated or amended by the Secretary, any and all obligations which shall have

arisen, or which may thereafter arise in connection therewith, by virtue of or pursuant to this License, and any violations of this License which may have occurred prior to such termination or amendment, shall be deemed not to be affected, waived or terminated by reason thereof, unless so expressly provided in the notice of termination of, or the amendment to the License.

13. The Secretary hereby determines that an emergency exists which requires a shorter period of notice than three days and that the period of notice, with respect to the issuance of this License, which is hereinafter provided, is reasonable under the circumstances.

IN WITNESS WHEREOF, I, R. G. Tugwell, Acting Secretary of Agriculture, do hereby execute in duplicate and issue this License on this 31st day of May, 1934, and pursuant to the provisions hereof, declare this License, as amended, to be effective on and after 12:01 A. M., Eastern Standard Time, June 1, 1934.

R. G. TUGWELL,
Acting Secretary of Agriculture.

EXHIBIT A.

MARKETING PLAN

SECTION A. *Cost of Milk to Distributors*

1. Each distributor, except as hereinafter provided, shall be obligated to pay, in the manner hereinafter provided, the following prices for milk, of 3.5 percent butterfat content, which he has purchased from producers, delivered f. o. b. distributor's country plant, platform, or loading station located within 70 miles from the City Hall in Chicago, Illinois:

Class I—$2.00 per hundredweight.

Class II—For each one hundred pounds of milk—to the average price per pound of 92 score butter at wholesale in the Chicago market, as reported daily by the United States Department of Agriculture for the delivery

period during which such milk is purchased, add 12 cents per pound, then multiply by 3.5.

Class III—For each one hundred pounds of milk, 3.5 times the average price per pound of 92 score butter at wholesale in the Chicago market as reported daily by the United States Department of Agriculture, for the delivery period during which such milk is purchased, to which amount shall be added 4 cents; unless there shall be in effect a price established pursuant to an applicable Marketing Agreement and/or License, issued pursuant to the Act, for any of the products used in this classification in which event the price for such portion shall be that established by the aforementioned Agreement and/or License.

The above prices shall apply to milk purchased outside the 70 mile zone, except as provided in Section B.

The term "delivery period" shall mean the period from the 1st to, and including, the last day of each month.

2. Class I milk means all milk sold or distributed by distributors as whole milk for consumption in the Chicago Sales Area.

Class II milk means all milk used by distributors to produce cream for sale or distribution by distributors as cream for consumption within the Chicago Sales Area and for the manufacture of ice cream mix or ice cream for consumption in the Chicago Sales Area. The term "cream" shall hereinafter be deemed to include "ice cream mix and ice cream".

Class III Milk means the quantity of milk purchased, sold, used or distributed by distributors in excess of Class I and Class II milk.

Milk delivered to a distributor by producers during any delivery period and sold or distributed as milk or cream outside the Chicago Sales Area or sold by such distributor to another distributor (including any person, defined as such, in the License who sells, uses or

distributes such milk or cream for ultimate consumption in any market with respect to which no License is in effect pursuant to Section 8 (3) of the Act covering such purchase from producers and such sale as milk or cream) shall be accounted for by the first distributors as Class I or Class II milk, respectively, unless such first distributor, on or before the date fixed for filing reports with the Market Administrator for such delivery period, shall furnish to the Market Administrator proof satisfactory to the Market Administrator that such milk or cream has been utilized for a purpose other than sale, use or distribution for ultimate consumption as milk or cream, in which event such milk shall be classified in accordance with such other use.

Any distributor purchasing milk and/or cream from another distributor shall, on or before the date fixed for filing reports with the Market Administrator, pursuant to paragraph 4 hereof, furnish to the distributor from whom he purchased such milk and/or cream, an affidavit as to the quantity of milk and/or cream sold, used or distributed in each of the classifications herein defined:

Any distributor who does not sell or distribute whole milk for ultimate consumption in the Chicago Sales Area, may purchase milk from producers who have no established bases. Such distributor

(a) shall pay to producers the Class II price provided for above for the milk purchased by him and used to produce cream shipped into, sold or distributed, as such, by him for consumption in the Chicago Sales Area;

(b) shall not be subject to any of the terms or provisions of this Exhibit, with respect to milk purchased from producers who have no established bases, except as provided in subparagraph (a) above, and in paragraph 1 of Section D; but

(c) shall, with respect to such milk, submit to the Market Administrator reports containing such information as the Market Administrator may require, similar to the kind of information required by other distributors pursuant to paragraph 4 hereof, which information shall be kept confidential as provided in said paragraph.

3. *The established base* for each producer shall be the quantity of milk allotted to such producer in accordance with the provisions of Exhibit B.

The delivered base for each producer shall be that quantity of milk delivered by such producer to distributors which is not in excess of ninety percent of the established base of such producer. The Market Administrator may, in his discretion, at any time adjust such percentage so that the total of all delivered bases shall, as far as practicable, be equal to the quantity of milk used by distributors as Class I and Class II milk, provided that such percentage shall in no event be less than eighty percent nor more than one hundred per cent of the base of each producer.

4. On or before the 7th day of each delivery period, each distributor to whom milk or cream was delivered during the preceding delivery period by (1) producers (who are not also distributors) and/or (2) distributors (other than those who operate only stores or other similar establishments) shall report to the Market Administrator with respect to milk or cream delivered during such delivery period in a manner prescribed by the Market Administrator:

(1) The actual deliveries, if any, at each location of the producers supplying such distributor, the total quantity of milk represented by the delivered bases of all such producers, and the total quantity of milk represented by the excesses over delivered bases of all such producers;

(2) The actual deliveries, if any, made to him by other distributors;

(3) The quantities of milk delivered which were sold, used or distributed by him as Class I, Class II and Class III milk, respectively, and

(4) Such other information as the Market Administrator may request for the purpose of performing the provisions of this Exhibit.

All information furnished the Market Administrator pursuant to this paragraph shall remain confidential in accordance with the provisions of the applicable General

Regulations, Agricultural Adjustment Administration, but any such information shall be submitted by the Market Administrator to the Secretary at any time upon the request of the Secretary.

5. With respect to each calendar month, the Market Administrator shall:

(a) Compute the total value, in each class, of all the milk as reported by each and all distributors pursuant to paragraph 4, on the basis of the prices set forth in paragraph 1, making the proper adjustments as provided in Section B, which computation shall not include milk purchased by distributors from other distributors.

(b) Compute the total quantity of milk by hundredweight represented by the delivered bases of all the producers as reported pursuant to paragraph 4.

(c) Compute the value of the milk purchased, sold or used by all distributors in excess of the total delivered bases as reported pursuant to paragraph 4 of all producers by multiplying such excess quantity of milk by the price provided for in paragraph 1 for Class III milk.

(d) Compute the total value of the milk represented by the total delivered bases of all producers by subtracting from the amount obtained in subdivision (a) the amount obtained in subdivision (c).

(e) Compute the total adjusted value of the quantity of milk represented by the total delivered bases of all producers, as reported by the distributors pursuant to paragraph 4, by adding to the total value of such milk as computed pursuant to subdivision (d) the adjustments provided for in Section C (1).

(f) Compute the blended price for the quantity of milk represented by the total delivered bases of all producers by dividing the amount obtained in subdivision (e) by the quantity of milk represented by the total delivered bases of all producers as determined in subdivision (b).

6. On or before the 12th day of each delivery period the Market Administrator shall notify all distributors who have reported pursuant to paragraph 4, of the blended price as determined above and of the Class III price as provided for in paragraph 1 above.

Each such distributor shall pay to all producers, on or before the 18th day of each delivery period, for milk delivered by such producers during the preceding delivery period subject to adjustments and deductions which are to be made pursuant to Sections C and D of this Exhibit:

(a) At the blended price for the quantity of milk delivered by each producer represented by such producer's delivered base; and

(b) At the Class III price for the quantity of milk delivered by such producer in excess of such producer's delivered base.

Provided that no provision in this License shall be construed as controlling or restricting any producers' cooperative association with respect to the actual deductions or charges, dividends or premiums to be made by such association from and/or to its members; but no such deductions or charges may be made by any such producers' cooperative association from any of its members, to meet a current operating loss incurred by such producers' cooperative association in its processing or distribution operations unless (a) expressly and specifically authorized by any such member to make such deduction or charge for such purpose, and (b) the producers' cooperative association notifies the market Administrator of the same.

7. On or before the 20th day of each delivery period, each distributor shall report to the Market Administrator in a manner prescribed by the Market Administrator as follows:

With respect to each producer: (1) his name, (2) total deliveries of milk and the average butterfat content thereof, (3) the amount of milk classified as delivered base and rate of payment of such milk, (4) the amount of milk classified as excess over delivered base and rate of payment of such milk, (5) the

total of such payments setting forth all adjustments, additions and deductions, and (6) such other similar information as the Market Administrator shall request.

8. The Market Administrator shall maintain for each distributor an adjustment account:

(a) which shall be debited for the total value of the quantity of milk reported as received, sold, distributed or used by such distributor during the preceding delivery period computed pursuant to subdivision (a) of paragraph 5; and

(b) which shall be credited for the total value of the quantity of milk reported by such distributor pursuant to paragraph 4 (excluding milk received from other distributors) on the basis of the prices to be paid to producers pursuant to paragraph 6. Such credit shall be made after giving effect to the adjustments to be made pursuant to paragraph 1 of Section C and before giving effect to the adjustments and deductions provided for in Sections C (2) and D of this Exhibit.

Balances due to the Market Administrator on adjustment accounts with respect to milk purchased during any delivery period shall be paid to the Market Administrator on or before the 15th day of the following delivery period. Any funds so paid to the Market Administrator shall as soon as reasonably possible be paid out by him pro rata among the distributors in proportion to the amounts of adjustments to which, but only to the extent to which, they are entitled.

9. Any errors in computation or payments or any discrepancies in reports of distributors or in the adjustment accounts shall be adjusted when settlements are made with respect to the following delivery period. Whenever the Market Administrator has a balance on hand in excess of any adjustments to be made to distributors, he may distribute such balance or any part thereof in any equitable manner among producers in the market.

10. The Market Administrator shall at all reasonable times have the right to check sampling, weighing and butterfat tests made by distributors, for the purpose of de-

termining the accuracy thereof. Any association of producers shall at all reasonable times have the right to check sampling, weighing and butterfat tests made by distributors, in respect to milk delivered by such association's members for the purpose of determining the accuracy thereof. In the event of a discrepancy between weights and tests reported by distributors and weights and tests determined by the Market Administrator, and/or any association of producers, settlements shall be made by distributors upon the basis of such weights and such butterfat content as the Market Administrator may in each case decide.

11. Producers shall have the right to deliver milk to plants or platforms of distributors, using any reasonable method of transportation which they, in their discretion, may select. No distributor shall interfere with or discriminate against producers in the exercise of such right. At the request of the Market Administrator, each distributor shall from time to time, submit a verified report stating the actual transportation charges on all milk delivered to him f. o. b. any and all plants, for the purpose of permitting the Market Administrator to review such transportation charges and to determine the reasonableness thereof.

12. No distributor shall sell to or purchase milk or cream from distributors for Class II use, as defined in paragraph 2 hereof, at a price, per pound of butterfat, lower than 2 cents per pound butterfat above the price specified in paragraph 1 hereof, for each pound of butterfat in milk purchased from producers and classified as Class II milk. If such milk or cream is sold or purchased in the form of ice cream mix or ice cream a reasonable charge shall be added for the ingredients other than milk or cream purchased for Class II use.

The foregoing price is without prejudice to the right of any distributor who asserts that such minimum price is in excess of the price necessary to effectuate the purpose of this license and to aid in the enforcement of the provisions thereof, to a hearing on the question of a modification or amendment of this license in accordance with the applicable General Regulations, Agricultural Adjustment Administration.

13. (a) The Market Administrator shall exclude from the computations made pursuant to paragraph 5, from the provisions of paragraph 6, and from the adjustments pursuant to paragraph 8, the amount of milk reported pursuant to paragraph 4 by each distributor whose Class I sales do not exceed 15 percent of the total deliveries of milk made to such distributor during any delivery period. Each such distributor shall pay to producers from whom such distributor has purchased milk not less than the use value of such milk pursuant to paragraph 1, with the adjustments as provided in section B, and with an adjustment per hundredweight of milk of 3 cents per 1/10th of 1 percent butterfat above or below 3.5 percent butterfat, as the case may be. Each such distributor shall not make deductions from producers pursuant to section C and section D, but each such distributor shall deduct and pay over to the Market Administrator 1c per hundredweight in regard to milk sold by such distributor for Class I and Class II purposes. Each such distributor may purchase milk from producers who do not have established bases.

(b) Provided that the Market Administrator may include in the computations the reports of any distributor coming within this provision and require such distributor to comply with all provisions of the license if such distributor purchases milk only from producers with established bases and processes or manufactures milk resulting from variations in production and sales of milk for consumption in the Chicago Sales Area.

SECTION B. *Adjustments in Cost of Milk to Distributors.*

Each distributor shall make the following deductions from the prices to be paid for milk purchased as provided in paragraph 1 of section A:

(a) If any producer has delivered milk to a distributor, at a country plant, platform, or loading station located more than 70 miles from the City Hall in Chicago, such distributor shall make a deduction with respect to his Class I sales of 1 cent per hundredweight for each 10 miles or part thereof in excess of 70 miles, but not in excess

of 100 miles from the City Hall in Chicago, and 1 cent per hundredweight for each 15 miles or part thereof in excess of 100 miles from the City Hall in Chicago.

Unless the prior written consent of the Market Administrator is obtained to compute the adjustments in the cost of milk to distributors made pursuant to this section, on some other basis, such adjustments shall be computed on the basis that to the extent necessary to supply each distributor with milk sold, distributed or used by him as Class I milk, the milk which was delivered to him at locations in or nearest to the Chicago Sales Area was sold, distributed or used by him as Class I milk.

(b) On Class I and Class II milk sold, distributed or used outside the Chicago Sales Area, the difference between the Class I and Class II prices specified in paragraph 1 of section A and such prices as the Market Administrator may determine to be the market prices in the market where such milk or cream is sold, distributed or used.

SECTION C. *Adjustments in Payments to Producers.*

1. All distributors shall make the following deductions from payments to be made to producers as provided in Section A:

If any producer has delivered milk to a distributor at a country plant, platform or loading station, located more than 70 miles from the City Hall in Chicago, such distributor shall make a deduction from the payment to be made to producers with respect to such producers' delivered bases, of 1c per hundredweight for each 10 miles or part thereof in excess of 70 miles, but not in excess of 100 miles from the City Hall in Chicago, and 1c per hundredweight for each 15 miles or part thereof in excess of 100 miles from the City Hall in Chicago.

2. Each distributor shall further make the following additional payments to, or deductions from, as the case

may be, the payments to be made to producers pursuant to Section A:

(a) If a producer has delivered to any distributor during any delivery period, milk having an average butterfat content other than 3.5%, such distributor shall pay to each such producer for each 1/10th of 1 percent of average butterfat content above 3.5%, or shall deduct for each 1/10th of 1 percent of average butterfat content below 3.5% an amount per hundredweight as follows:

(1) On delivered base milk 4c per hundredweight.

(2) On all of milk delivered in excess of delivered base an amount equal to 1/10th of the average price per pound of 92 score butter at wholesale in the Chicago market as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased.

3. Any distributor, may with the prior approval of the Market Administrator, make payments to producers in addition to the prices provided for in paragraph 6 of Section A, provided that such additional payments are made to all the producers supplying such distributor with milk of similar quality and grade. No distributor may accept services from or render services to a producer or an association of producers from whom he is purchasing milk without making a reasonable payment or charge, as the case may be, for such services.

SECTION D. *Deductions from Payments to Producers.*

1. Each distributor making payments pursuant to Section A shall deduct 1c per hundredweight from the payments to be made by him pursuant to Section A in regard to all milk delivered to him and each distributor who does not sell or distribute whole milk for ultimate consumption in the Chicago Sales Area shall deduct 1c per hundredweight in regard to all milk delivered to him by producers which is sold as cream in the Chicago Sales Area and such payments shall be made to the Market Administrator on or before the 18th day after the last day of each delivery period.

2. Each distributor shall, in addition, deduct from the payments to be made by him pursuant to section A in regard to all milk delivered to him by producers who are not members of the Pure Milk Association, hereinafter called the "Association", an amount equal to the deductions authorized by the members of the Association for furnishing benefits to such members, which deductions from nonmembers, however, shall in no event exceed three cents per hundredweight. Such deduction shall be paid over to the Market Administrator on or before the 18th day following the last day of each delivery period.

3. The Market Administrator, in his discretion, may at any time waive the payment of the foregoing deductions (including the deductions made pursuant to paragraph 13 (a) of section A) to him, or any part thereof, for any delivery period, (in which event the deductions so waived shall not be made by the distributors from payments to producers); provided, however, that any such waiver shall be equal (a) among all producers with respect to the amounts paid to the Market Administrator pursuant to paragraph 1 above, and (b) among all producers not members of the Association with respect to the amounts deducted pursuant to paragraph 2 above.

4. The Market Administrator shall maintain separate accounts for the payments made to him pursuant to paragraphs 1 (including the deductions made pursuant to paragraph 13 (a) of section A) and 2. The Market Administrator shall apportion such moneys in the following manner:

(a) The payments made pursuant (1) to paragraph 1 and (2) to paragraph 13 (a) of section A, shall be retained by the Market Administrator to meet his cost of operation; provided, however, that any such funds which may remain over from such deductions in excess of the cost of operation for any particular delivery period shall be applied by the Market Administrator in meeting his cost of operation for the succeeding delivery period, and to the extent that it may be practical, the Market Administrator shall waive a portion of such deductions for the succeeding delivery period as hereinabove provided.

(b) The payments made pursuant to paragraph 2 shall be retained by the Market Administrator in a separate fund and shall be expended by him for the purpose of securing for producers who are not members of the Association, market information, supervision of weights and tests, guarantee against failure by distributors to make payments for milk purchased and other similar benefits; provided, however, that the Market Administrator may, in his discretion, employ the facilities and services of any agent or agents, and pay over such amount to such agent or agents for the purpose of securing to such nonmembers the aforementioned benefits, if such benefits to nonmembers may be more efficiently and economically secured thereby. The Market Administrator shall pay over such funds to such agent or agents, if he determines to do so, only upon the consent of such agent or agents; (a) to keep its or their books and records in a manner satisfactory to the Market Administrator; (b) to permit the Market Administrator to examine its or their books and records and to furnish the Market Administrator such verified reports or other information as the Market Administrator may from time to time request; and (c) to disburse such funds in the manner above provided.

(c) Whenever the Market Administrator has a balance on hand in either of the accounts provided for in subdivisions (a) and (b) of this paragraph, he may distribute such balance or any part thereof, in an equitable manner, among the producers; provided, however, that any such distribution of the balance in the account provided for in subdivision (a) shall be made to all producers, and any such distribution of the balance in the account provided for in subdivision (b) shall be made only to all producers not members of the Pure Milk Association.

SECTION E. *The Market Administrator—His Designation, Duties and Compensation.*

The Secretary shall designate the Market Adminis-

trator who shall perform such duties as may be provided for him in the License. The Market Administrator so designated shall be subject to removal, at any time, by the Secretary. Within forty-five days after he enters upon his duties, the Market Administrator shall execute and deliver to the Secretary his bond in such amount as the Secretary may determine, with surety thereon satisfactory to the Secretary conditioned upon the faithful performance of his duties as such Market Administrator. The Market Administrator shall be entitled: (a) to reasonable compensation, which shall be determined by the Secretary; (b) to borrow money to meet his cost of operation until such time as the first payments are made to him pursuant to section D of this exhibit, which moneys shall be repaid out of the payments retained by the Market Administrator pursuant to paragraph 4 (a) of said section D; and (c) to incur such other expenses, including compensation for persons employed by the Market Administrator as the Market Administrator may deem necessary for the proper conduct of his duties, and the cost of procuring and continuing his bond, which total expense shall be deemed to be the cost of operation of the Market Administrator. The Market Administrator shall not be held personally responsible in any way whatsoever to any licensee or to any other person for errors in judgment, mistakes of fact or other acts, either of commission or omission except for acts of dishonesty, fraud, or malfeasance in office.

The Market Administrator shall keep such books and records as will clearly reflect the financial transactions provided for in this License. The Market Administrator shall permit the Secretary to examine his books and records at all times, and furnish the Secretary such verified reports or other information as the Secretary may, from time to time, request of him.

The Market Administrator shall have the right to examine the books and records of the distributors and the books and records of the affiliates and subsidiaries of each distributor for the purposes of (1) verifying the reports and information furnished to the Market Administrator by each distributor, pursuant to this License, and/or (2) in the event of the failure of any distributor to furnish reports or information as required by this License, obtaining the information so required.

SECTION F. *Establishment of Milk Industry Board.*

The Secretary may, in his discretion, at any time, establish a Milk Industry Board, which shall have representation of producers, distributors and the public. In establishing the Milk Industry Board, the Secretary will give due consideration to the recommendations, and nominations by various groups of producers, distributors and the public. The Milk Industry Board shall have such duties and powers as the Secretary may, from time to time, delegate to it in order to effectuate the provisions and purposes of this License. The Secretary may further, in his discretion, authorize and direct the Market Administrator to pay over to the Milk Industry Board for the purpose of meeting its general expenses, a portion of the moneys paid to the Market Administrator for his cost of operation pursuant to Section D of this Exhibit, providing that such portion shall in no event exceed ¼th cent per hundred pounds of milk for which such payment is made.

SECTION G. *New Producers and Purchasers from Producers Without Bases.*

1. New producers shall be those producers whose milk was neither being purchased by distributors (other than those distributors specified in paragraph 13 (a) of Section A) nor being distributed in the Chicago Sales Area within 90 days prior to the effective date of the License.

Except during an emergency period as provided in paragraph 2 hereof, no such distributor shall hereafter purchase milk from any new producer unless the distributor shall first obtain a permit by making due written application to the Market Administrator upon forms supplied by said Market Administrator, authorizing him to purchase such milk. The Market Administrator shall render his decision in connection with any such application within two weeks after filing of application. The Market Administrator, in determining whether to issue such permit, shall ascertain whether its issuance will tend to prevent the effectuation of the policy of the Act or of the purpose of this License. In the event that any distributor is denied such a permit after having made such written

application to the Market Administrator, the producer or the distributor shall have the right of immediate appeal to the Secretary.

Whenever a distributor is granted a permit to purchase milk from a new producer, a base shall be allotted to such new producer by the Market Administrator in accordance with the provisions of Exhibit B.

2. During any emergency period when the normal supply of milk from producers who have bases is not sufficient to meet the Class I requirements of any distributor, such distributor may, with the prior approval of the Market Administrator, purchase during such emergency period, milk of producers who have no bases; provided, however, that in any such event, the producer selling such milk shall be paid for the same, depending upon the ultimate use of such milk and at the prices as provided for in paragraph 1, Section A, and such payments shall not be included in the computation as provided in paragraph 5, Section A, but shall be reported separately to the Market Administrator by the distributor who purchased the milk from such producer.

EXHIBIT B.

Rules for Establishment of Bases

1. For the purpose of the License, the term "established base" as used in respect to any producer, farm, or herd, as the case may be, shall mean:

(a) In the case of producers who are members of the Pure Milk Association, hereinafter called the "Association", the quantity of milk recorded as such bases in the files and records of the Association; provided that the Association has given the Market Administrator access to such files and records. All changes in the aforesaid bases shall be reported immediately to the Market Administrator. Any changes in the aforesaid bases shall not be effective until (1) reported to the Market Administrator, and (2) approved by the Market Administrator.

(b) In the case of producers who are not members of the Association, bases shall be allotted by the Market Administrator, which bases shall be equitable as compared with the bases established pursuant to subdivision (a) above. The Market Administrator shall make such revisions from time to time as he may deem advisable and necessary to the end that such bases may be equitable as among producers, and that the total of all established bases may, so far as practical, be equal to the total quantity of milk sold or used by distributors as Class I and Class II milk.

2. Every distributor shall, within ten days of the effective date of this License, submit to the Market Administrator written reports, verified under oath, containing the following information (1) with respect to each producer who has delivered milk to such distributor; and (2) for each calendar month during the years of 1933 and 1934 or such portion thereof as the producer may have delivered milk:

(a) The total pounds of delivered milk.

(b) The number of days on which milk was delivered.

(c) The average percentage of butterfat in such delivered milk.

(d) The total pounds of butterfat in such delivered milk.

3. When bases are established for producers, as hereinabove provided, the Market Administrator shall notify each distributor of the bases of the producers who are delivering milk to such distributor.

4. A producer with an established base who rents a farm as a tenant may retain his established base.

5. A tenant renting a farm may transfer his individual established base from farm to farm with the herd.

6. A landlord who rents on shares is entitled to the entire base to the exclusion of the tenant, if the landlord owns the entire herd on such farm. If the cattle are owned jointly, whether in a landlord and tenant relationship or otherwise, the base will be divided between the joint owners according to the ownership of the cattle.

7. The separate bases of any landlord and his tenant or tenants may be combined and handled as a single base. When the landlord and tenant or tenants separate, the combined bases shall be divided according to the proportion of the ownership of the herd.

8. Any producer who shall voluntarily cease to market milk for ultimate consumption as whole milk in the Chicago Sales Area for a period of more than forty-five consecutive days, shall forfeit his base. In the event that he resumes production thereafter, he shall be treated, for the purpose of these rules, as if he were a new producer.

9. Any producer may sell his base with the sale of his entire herd to one purchaser at one time, provided, however, that such base so sold or transferred shall be forfeited, unless the entire herd is maintained for six months consecutively after such sale and transfer.

10. Any producer may combine all bases to which he may be entitled hereunder.

11. Any producer whose average daily shipment for any three consecutive months, except April, May and June, is less than 75 percent of his base will thereby establish a new base equal to such average daily shipment.

12. Where a herd is dispersed for any reason without an established base having been transferred with the herd, the producer must replace the herd within 45 days if he is to retain his established base.

Docket No. 1-C

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

LICENSE SERIES—LICENSE No. 30

AMENDMENT TO AMENDED LICENSE FOR MILK CHICAGO SALES AREA

Issued by the Secretary of Agriculture, June 30, 1934.
Effective date July 1, 1934 (12:01 a. m., eastern standard time).

AMENDMENT TO AMENDED LICENSE FOR MILK CHICAGO SALES AREA LICENSE SERIES—LICENSE No. 30

WHEREAS, it is provided by section 8 of the Agricultural Adjustment Act, as amended, as follows:

"Section 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

"(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing Acts of Congress or regulations pursuant thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof. * * *

"(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade practices and charges,

and to keep such systems of accounts, as may be necessary for the purpose of part 2 of this title"; and

WHEREAS, R. A. Wallace, Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has on the fifth day of February, 1934, issued a License for Milk, Chicago Sales Area; and

WHEREAS, H. G. Tugwell, Acting Secretary of Agriculture, acting under provisions of said Act for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has on the 31st day of May, 1934, issued an Amended License for Milk—Chicago Sales Area (hereinafter called the "License"); and

WHEREAS, ..., Secretary of Agriculture, has determined to modify the terms and conditions of the License;

NOW, THEREFORE, ..., Secretary of Agriculture, acting under the authority vested in him as aforesaid;

Hereby amends and modifies the terms and conditions of the License as follows:

1. That paragraph 1 of section A of exhibit A which appears below, be deleted from the License:

"1. Each distributor, except as hereinafter provided shall be obligated to pay, in the manner hereinafter provided, the following prices for milk, of 3.5 percent butterfat content, which he has purchased from producers, delivered f. o. b. distributor's country plant, platform, or loading station located within 70 miles from the City Hall in Chicago, Illinois:

Class I—$2.00 per hundredweight.

Class II—For each one hundred pounds of milk—to the average price per pound of 92 score butter at wholesale in the Chicago market, as reported daily by the United States Department of Agriculture for the delivery period during which such milk is purchased, add 12 cents per pound, then multiply by 3.5.

Class III—For each one hundred pounds of milk, 3.5 times the average price per pound of 92 score butter at wholesale in the Chicago market as reported daily by the United States Department of Agriculture, for the delivery period during which such milk is purchased, to which amount shall be added 4 cents; unless there shall be in effect a price established pursuant to an applicable Marketing Agreement and/or License, issued pursuant to the Act, for any of the products used in this classification in which event the price for such portion shall be that established by the aforementioned Agreement and/or License.

The above prices shall apply to milk purchased outside the 70 mile zone, except as provided in Section B.

The term 'delivery period' shall mean the period from the 1st to, and including, the last day of each month."

2. That the following be substituted as paragraph 1 of section A of exhibit A of the License:

"1. Each distributor, except as hereinafter provided, shall be obligated to pay, in the manner hereinafter provided, the following prices for milk, of 3.5 percent butterfat content, which he has purchased from producers, delivered f. o. b. distributor's country plant, platform, or loading station located within 70 miles from the City Hall in Chicago, Illinois:

Class I—$2.25 per hundredweight.

Class II—For each one hundred pounds of milk—to the average price per pound of 92 score butter at wholesale in the Chicago market, as reported daily by the United States Department of Agriculture for the delivery period during which such milk is purchased, add 12 cents per pound, then multiply by 3.5.

Class III—For each one hundred pounds of milk, 3.5 times the average price per pound of 92 score butter at wholesale in the Chicago market as reported daily by the United States Department of Agriculture, for the delivery period during which such milk is purchased, to which amount shall be added 4 cents; unless there shall be in effect a price established pursuant to an applicable Marketing Agreement and/or License, issued pursuant to the Act, for any of the products used in this classification in which event the price for such portion shall be that established by the aforementioned Agreement and/or License.

The above prices shall apply to milk purchased outside the 70 mile zone, except as provided in Section B.

The term 'delivery period' shall mean the period from the 1st to, and including, the last day of each month."

3. This Amendment to the License shall become effective at such times as the Secretary may declare above his signature attached hereto.

4. The provisions of the License except as amended by this Amendment shall continue to be in full force and effect.

5. Nothing herein contained shall release or otherwise effect the liability of any licensee in respect to any violation by him prior to the effective date of this Amendment to said License.

6. The Secretary hereby determines that an emergency exists which requires a shorter period of notice than three days, and that the period of notice, with respect to the issuance of this Amendment to the License, which is hereinafter provided, is reasonable under the circumstances.

IN WITNESS WHEREOF, H. A. Wallace, Secretary of Agriculture, does hereby execute in duplicate and issue this

Amendment to the Amended License for Milk—Chicago Sales Area, in the city of Washington, District of Columbia, on this 30th day of June, 1934, and pursuant to the provisions hereof, declare the provisions of this Amendment to said Amended License to be effective on and after 12:01 a. m., eastern standard time, July 1, 1934.

H. A. WALLACE,
Secretary of Agriculture.

Docket No. 1

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

LICENSE SERIES—LICENSE No. 30

AMENDMENT TO AMENDED LICENSE FOR MILK CHICAGO SALES AREA

Issued by the Secretary of Agriculture, July 17, 1934. Effective date July 18, 1934 (12:01 a. m., eastern standard time).

AMENDMENT TO AMENDED LICENSE FOR MILK CHICAGO SALES AREA LICENSE SERIES—LICENSE No. 30

WHEREAS, it is provided by section 8 of the Act as follows:

"Section 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

"(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing Acts of Congress or regulations pursuant

thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof * * *

"(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade practices and charges, and to keep such systems of accounts, as may be necessary for the purpose of part 2 of this title"; and

WHEREAS, the Secretary, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has, on the 31st day of May, 1934, issued a License for Milk—Chicago Sales Area, as amended, (hereinafter called the License); and

WHEREAS, the Secretary of Agriculture has determined to modify the terms and conditions of the License:

NOW, THEREFORE, the Secretary of Agriculture, acting under the authority vested in him as aforesaid;

Hereby amends and modifies the terms and conditions of the License as follows:

1. That paragraph 3 of part II of the License, which appears below, be deleted from the License:

> "3. No distributor shall purchase milk from any producer unless such producer authorizes such distributor, with respect to payments for milk purchased from such producer, to comply with the provisions of exhibit A."

2. That the paragraphs numbered "4" to "13", inclusive, of part II be renumbered as paragraph "3" to "12", inclusive.

3. This amendment to the License shall become effective at such time as the Secretary may declare above his signature attached hereto.

4. The provisions of the License, except as amended by this amendment, shall continue to be in full force and effect.

5. Nothing herein contained shall release or otherwise

affect the liability of any licensee in respect to any violation by him prior to the effective date of this amendment to the License.

The Secretary hereby determines that an emergency exists which requires a shorter period of notice than three (3) days, and that the period of notice, with respect to the issuance of this amendment to the License, which is hereinafter provided, is reasonable under the circumstances.

IN WITNESS WHEREOF, HENRY A. WALLACE, Secretary of Agriculture of the United States, does hereby execute in duplicate, this amendment to the License for Milk—Chicago Sales Area, as amended, in the city of Washington, District of Columbia, on this 17th day of July, 1934, and pursuant to the provisions hereof, declare the provisions of this amendment to the License for Milk—Chicago Sales Area, as amended, to be effective on and after 12:01 a. m., eastern standard time, July 18, 1934.

H. A. WALLACE,
Secretary of Agriculture.

Docket No. 1C

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

LICENSE SERIES—LICENSE No. 30

AMENDMENT TO AMENDED LICENSE
FOR MILK
CHICAGO, ILLINOIS, SALES AREA

Issued by the Acting Secretary of Agriculture, August 21, 1934. Effective date August 22, 1934 (12:01 a. m., eastern standard time).

AMENDMENT TO AMENDED LICENSE FOR MILK
CHICAGO, ILLINOIS, SALES AREA

LICENSE SERIES—LICENSE No. 30

WHEREAS, the Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within

the limitations therein contained, and pursuant to the regulations issued thereunder, has on the 3rd day of February, 1934, issued a License for Milk—Chicago Sales Area; and

WHEREAS, Rexford G. Tugwell, Acting Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has on the 31st day of May, 1934, issued an Amended License for Milk—Chicago Sales Area; and

WHEREAS, the Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has on the 30th day of June, 1934, issued an Amendment to an Amended License—Chicago Sales Area; and

WHEREAS, the Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has on the 17th day of July, 1934, issued an Amendment to an Amended License, as amended; and

WHEREAS, the undersigned finds that it is necessary to issue the following Amendment to the Amended License for Milk—Chicago Sales Area, as amended, pursuant to Section 8 (3) of the Agricultural Adjustment Act and applicable General Regulations of the Agricultural Adjustment Administration; and

WHEREAS, the undersigned finds that this Amendment is in accordance with the provisions of Section 8 (3) of the said Act and tends to effectuate the purposes of the said Act; and

WHEREAS, the undersigned finds that the subject matter of this Amendment is embraced within the scope of a hearing heretofore held on a Marketing Agreement pursuant to applicable General Regulations of the Agricultural Adjustment Administration:

NOW, THEREFORE, the Secretary of Agriculture, acting under the authority vested in him as aforesaid;

Hereby amends and modifies the terms and conditions of the said Amended License, as amended (hereinafter called the License), as follows:

1. That paragraph 9 of section A of exhibit A of the License, which appears below, be deleted from the License:

"9. Any errors in computation of payments or any discrepancies in reports of distributors or in the adjustment accounts shall be adjusted when settlements are made with respect to the following delivery period. Whenever the Market Administrator has a balance on hand in excess of any adjustments to be made to distributors, he may distribute such balance or any part thereof in an equitable manner among producers in the market."

2. That the following be substituted as paragraph 9 of section A of exhibit A of the License:

"9. The Market Administrator may deduct, from the total amount computed pursuant to subdivision (a) of paragraph 5, an amount suitable for the maintenance of a reserve fund against the failure or delay of distributors to make payments on adjustment accounts as provided in paragraph 8. Repayments of any such deductions shall be made by the Market Administrator to the producers from whom such deductions were made in the same proportion as the original deduction. Any error in computation of payments or any discrepancies in the reports of distributors or in the adjustment accounts shall be adjusted when settlements are made with respect to the following month. All such funds shall be kept separate by the Market Administrator and shall in no event be used by him to meet any costs or liabilities incurred by him under this License."

3. That a paragraph numbered 14, which appears below, be added to section A of exhibit A of the License:

"14. No distributor shall sell milk to or purchase milk from another distributor for Class I purposes at less than the Class I price specified in paragraph 1, subject to adjustments as provided in section B of this exhibit. If the selling distributor pasteurizes, bottles, or otherwise processes or transports such milk, which results in a service to the buying distributor, a reasonable charge and/or payment as the case may be, shall be made therefor. Any contract or agreement entered into between one distributor and another dis-

tributor, prior to the effective date of this License, covering the purchase and/or delivery of such milk, shall be deemed to be superseded by the terms and provisions of this License insofar as such contract or agreement is inconsistent with any provisions hereof."

4. This Amendment to the License shall become effective at such time as the Secretary may declare above his signature attached hereto.

5. The provisions of the License, except as amended by this Amendment, shall continue to be in full force and effect.

6. Nothing herein contained shall release or otherwise affect the liability of any licensee in respect to any violation by him prior to the effective date of this Amendment to the License.

7. The Secretary hereby determines that an emergency exists which requires a shorter period of notice than three (3) days, and that the period of notice, with respect to the issuance of this Amendment to the License, which is hereinafter provided, is reasonable under the circumstances.

IN WITNESS WHEREOF, R. G. Tugwell, Acting Secretary of Agriculture of the United States, does hereby execute in duplicate, this Amendment to the Amended License for Milk—Chicago Sales Area, as amended, in the City of Washington, District of Columbia, on this 21st day of August, 1934, and pursuant to the provisions hereof, declare the provisions of this Amendment to the Amended License for Milk—Chicago Sales Area, as amended, to be effective on and after 12:01 a. m., eastern standard time, August 22, 1934.

R. G. TUGWELL,
Acting Secretary of Agriculture.

Docket No. 10

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

LICENSE SERIES—LICENSE No. 30

AMENDMENT TO AMENDED LICENSE FOR MILK

CHICAGO, ILLINOIS, SALES AREA

Issued by the Acting Secretary of Agriculture, October 30, 1934. Effective date November 1, 1934 (12:01 a. m., eastern standard time).

AMENDMENT TO AMENDED LICENSE FOR MILK
CHICAGO, ILLINOIS, SALES AREA

WHEREAS, H. A. Wallace, Secretary of Agriculture, acting under the provisions of the Agricultural Adjustment Act, as amended, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has, on the 3rd day of February, 1934, issued a License for Milk—Chicago Sales Area; and

WHEREAS, R. G. Tugwell, Acting Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has, on the 31st day of May, 1934, issued an Amended License for Milk—Chicago Sales Area; and

WHEREAS, H. A. Wallace, Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has, on the 30th day of June, 1934, issued an Amendment to the Amended License for Milk—Chicago Sales Area; and

WHEREAS, H. A. Wallace, Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has, on the 17th day

of July, 1934, issued an Amendment to the Amended License for Milk—Chicago Sales Area, as amended; and

WHEREAS, R. G. Tugwell, Acting Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has, on the 21st day of August, 1934, issued an Amendment to the Amended License for Milk—Chicago Sales Area, as amended; and

WHEREAS, the undersigned finds that it is necessary to issue the following Amendment to the Amended License for Milk—Chicago Sales Area, as amended, pursuant to Section 8 (3) of the Agricultural Adjustment Act, and applicable General Regulations of the Agricultural Adjustment Administration; and

WHEREAS, the undersigned finds that this Amendment is in accordance with the provisions of Section 8 (3) of the said Act and tends to effectuate the purposes of the said Act; and

WHEREAS, the undersigned finds that the subject matter of this Amendment is embraced within the scope of a hearing heretofore held on a Marketing Agreement pursuant to applicable General Regulations of the Agricultural Adjustment Administration:

NOW, THEREFORE, the undersigned, acting under the authority vested in him as aforesaid,

Hereby amends and modifies the terms and conditions of the said Amended License, as amended (hereinafter called the License), as follows:

1. That paragraph 1 of section A of exhibit A which appears below, be deleted from the License:

"1. Each distributor, except as hereinafter provided, shall be obligated to pay, in the manner hereinafter provided, the following prices for milk, of 3.5 per cent butterfat content, which he has purchased from producers, delivered f. o. b. distributor's country plant, platform, or loading station located within 70 miles from the City Hall in Chicago, Illinois:

Class I—$2.25 per hundredweight.

Class II—For each one hundred pounds of milk—to the average price per pound of 92

score butter at wholesale in the Chicago market, as reported daily by the United States Department of Agriculture for the delivery period during which such milk is purchased, add 12 cents per pound, then multiply by 3.5.

Class III—For each one hundred pounds of milk, 3.5 times the average price per pound of 92 score butter at wholesale in the Chicago market as reported daily by the United States Department of Agriculture, for the delivery period during which such milk is purchased, to which amount shall be added 4 cents; unless there shall be in effect a price established pursuant to an applicable Marketing Agreement and/or License, issued pursuant to the Act, for any of the products used in this classification in which event the price for such portion shall be that established by the aforementioned Agreement and/or License.

The above prices shall apply to milk purchased outside the 70 mile zone, except as provided in section B.

The term 'delivery period' shall mean the period from the 1st to, and including, the last day of each month."

2. That the following be substituted as paragraph 1 of section A of exhibit A of the License:

"1. Each distributor, except as hereinafter provided, shall be obligated to pay, in the manner hereinafter provided, the following prices for milk, of 3.5 per cent butterfat content, which he has purchased from producers, delivered f. o. b. distributor's country plant, platform, or loading station located within 70 miles from the City Hall in Chicago, Illinois:

Class I—$2.00 per hundred weight.

Class II—For each one hundred pounds of milk—to the average price per pound of 92 score butter at wholesale in the Chicago

market, as reported daily by the United States Department of Agriculture for the delivery period during which such milk is purchased, add 10 cents per pound, then multiply by 3.5.

Class III—For each one hundred pounds of milk, 3.5 times the average price per pound of 92 score butter at wholesale in the Chicago market as reported daily by the United States Department of Agriculture, for the delivery period during which such milk is purchased, to which amount shall be added 4 cents; unless there shall be in effect a price established pursuant to an applicable Marketing Agreement and/or License, issued pursuant to the Act, for any of the products used in this classification in which event the price for such portion shall be that established by the aforementioned Agreement and/or License.

The above prices shall apply to milk purchased outside the 70 mile zone, except as provided in section B.

The term 'delivery period' shall mean the period from the 1st to, and including, the last day of each month."

3. This Amendment to the License shall become effective at such time as the Secretary may declare above his signature attached hereto.

4. The provisions of the License except as amended by this Amendment shall continue to be in full force and effect.

5. Nothing herein contained shall release or otherwise affect the liability of any licensee in respect to any violation by him prior to the effective date of this Amendment to said License.

6. The Secretary hereby determines that an emergency exists which requires a shorter period of notice than three days, and that the period of notice, with respect to the issuance of this Amendment to the License, which is hereinafter provided, is reasonable under the circumstances.

IN WITNESS WHEREOF, M. L. Wilson, Acting Secretary of Agriculture, does hereby execute in duplicate and issue this Amendment to the Amended License for Milk—Chicago Sales Area, as amended, in the City of Washington, District of Columbia, on this 30th day of October, 1934, and pursuant to the provisions hereof, declare the provisions of this amendment to said Amended License to be effective on and after 12:01 a. m., eastern standard time, November 1, 1934.

M. L. Wilson,
Acting Secretary of Agriculture.

Docket No.—1
License No.—30

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

LICENSE SERIES—LICENSE No. 30

AMENDED LICENSE
FOR MILK
CHICAGO, ILLINOIS, SALES AREA
WITH
EXHIBIT A
ALLOTMENT AND REGULATION OF BASES

Issued by the Secretary of Agriculture, December 1, 1934. Effective date December 2, 1934 (12:01 a. m., eastern standard time).

AMENDED LICENSE FOR MILK
CHICAGO, ILLINOIS, SALES AREA

ARTICLE I—PREAMBLE

WHEREAS, section 8 of the Agricultural Adjustment Act, as amended, provides as follows:

"Sec. 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power— * * *

"(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing Acts of Congress or regulations pursuant thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof. * * *

"(4). To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade practices and charges, and to keep such systems of accounts, as may be necessary for the purpose of part 2 of this title. * * *"

and

WHEREAS, the Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has on the 3rd day of February, 1934, issued a License for Milk—Chicago Sales Area; and

WHEREAS, R. G. Tugwell, Acting Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has on the 31st day of May, 1934, issued an Amended License for Milk—Chicago Sales Area; and

WHEREAS, the Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has on the 30th day of June, 1934, issued an Amendment to Amended License for Milk—Chicago Sales Area; and

WHEREAS, the Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within the limi-

tations therein contained, and pursuant to the regulations issued thereunder, has on the 17th day of July, 1934, issued an Amendment to the Amended License for Milk—Chicago Sales Area; and

WHEREAS, R. G. Tugwell, Acting Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has on the 21st day of August, 1934, issued an Amendment to the Amended License for Milk—Chicago Sales Area; and

WHEREAS, M. L. Wilson, Acting Secretary of Agriculture, acting under the provisions of said Act, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has on the 30th day of October, 1934, issued an amendment to the Amended License for Milk—Chicago Sales Area; and

WHEREAS, the undersigned finds that the marketing, distribution and handling of milk and the products thereof, covered by this License, are in the current of interstate commerce since the portion thereof which occurs within the bounds of a single State affects and actually and potentially competes with the marketing, distribution and handling of commodities and products which occur between or among several States, and since the commodity, and the products thereof, covered by this License cannot be separated into interstate and intrastate portions, the supply and the marketing, distribution and handling thereof being inextricably commingled, so that it is impossible to regulate the interstate marketing, distribution and handling without also regulating the intrastate marketing, distribution and handling, and the failure to regulate the latter will defeat and obstruct the purposes of the Act with respect to the former; and

WHEREAS, the undersigned has determined to modify the terms and conditions of the said Amended License for Milk —Chicago Sales Area, pursuant to section 8 (3) of the Agricultural Adjustment Act, as amended, and applicable General Regulations of the Agricultural Adjustment Administration; and

WHEREAS, the undersigned finds that this Amended License and the terms and conditions hereof are in accord-

ance with the provisions of section 8 (3) of the said Act and tend to effectuate the purposes of the Act; and

WHEREAS, the undersigned finds that the subject matter of this Amended License is embraced within the scope of a hearing heretofore held on a Marketing Agreement pursuant to applicable General Regulations of the Agricultural Adjustment Administration:

NOW, THEREFORE, the undersigned, acting under the authority vested in him as aforesaid:

Hereby amends and modifies the terms and conditions of the said License and hereby licenses each and every distributor to engage in the business of marketing, distributing or handling milk or cream as a distributor in the Chicago Sales Area, subject to the terms and conditions set forth in this Amended License, hereinafter called the "License."

ARTICLE II—DEFINITIONS.

SECTION 1. *Definitions of Terms.* As used in this License, the following words and phrases shall be defined as follows:

1. "Act" means the Agricultural Adjustment Act approved May 12, 1933, as amended.

2. "Secretary" means the Secretary of Agriculture of the United States.

3. "Chicago Sales Area", hereinafter called the "Sales Area", means and includes the city of Chicago and all of that territory lying within the boundaries of Cook County, Lake County and DuPage County, State of Illinois; the townships of Dundee, Elgin, St. Charles, Geneva, Batavia and Aurora, in Kane County, State of Illinois; the township of Oswego in Kendall County, State of Illinois; the townships of Wheatland, DuPage, Plainfield, Lockport, Homer, Troy, Joliet, New Lenox, Frankfort and Crete in Will County, State of Illinois; and the townships of St. John, Ross, North, Calumet, and Hobart in Lake County, State of Indiana.

4. "Person" means any individual, partnership, corporation, association or other business unit.

5. "Producer" means any person, irrespective of whether any such person is also a distributor, who pro-

duces milk in conformity with the applicable health requirements in force and effect within the Sales Area for milk to be sold for consumption as whole milk or cream in the Sales Area.

6. "New Producer" means (1) a producer whose milk was neither being purchased by distributors nor being distributed in the Sales Area within ninety (90) days prior to the effective date of this License, or (2) a producer who has ceased to market milk pursuant to the terms and provisions of this License for a period of forty-five (45) consecutive days or more, and thereafter markets milk pursuant to the terms and provisions of this License.

7. "Distributor" means any of the following persons, (irrespective of whether any of such persons is a producer or an association of producers), wherever located or operating, whether within or without the Sales Area, engaged in the business of distributing, marketing, or in any manner handling whole milk or cream, in whole or in part, for ultimate consumption in the Sales Area:

(a) who pasteurize, bottle or process milk or cream;

(b) who distribute milk or cream at wholesale or retail to (1) hotels, restaurants, stores or other establishments for consumption on the premises; (2) stores or other establishments for resale; and (3) consumers;

(c) who operate stores or other establishments selling milk or cream at retail for consumption off the premises;

(d) who purchase, market or handle milk or cream which is sold for resale in the Sales Area.

8. "Subsidiary" means any person of, or over whom or which, a distributor or an affiliate of a distributor has, or several distributors collectively have, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

9. "Affiliate" means any person and/or any subsidiary thereof, who or which has, either directly or indirectly, actual or legal control of or over a distributor, whether by stock ownership or in any other manner.

10. "Books and records" means books, records, accounts, contracts, memoranda, documents, papers, correspondence or other data pertaining to the business of the person in question.

11. "Market Administrator" means the person designated pursuant to article III.

12. "Delivery period" means the period from the first to, and including, the last day of each month.

13. "Established base", for each producer, including new producers, means that quantity of milk allotted to such producer in accordance with the provisions of exhibit A, which is attached hereto and made a part hereof.

14. "Class I percentage" means such a percentage of the total established bases as the Market Administrator shall determine at intervals of once for every three months, by dividing the average monthl, sales of Class I milk for the preceding three months by the total established bases of the market. The Market Administrator may increase or reduce this percentage sufficiently to allow for minor variations in Class I milk.

15. "Class II percentage" means such a percentage of the total established bases as the Market Administrator shall determine at intervals of once for every three months by dividing the average monthly sales of Class II milk for the preceding three months by the total established bases of the market. The Market Administrator may increase or reduce this percentage sufficiently to allow for minor variations in Class II milk.

16. "Class I percentage base" means for each producer, including new producers, the established base of that producer multiplied by the Class I percentage.

17. "Class II percentage base" means for each producer, including new producers, the established base of that producer multiplied by the Class II percentage.

18. "Delivered Class I percentage base" means for each producer, including new producers, that quantity of milk delivered by such producer to distributors which is not in excess of the Class I percentage base of such producer.

19. "Delivered Class II percentage base" means for

each producer, including new producers, that quantity of milk delivered by such producer to distributors which is in excess of such producer's Class I percentage base but which is not in excess of the combined Class I and Class II percentage bases of such producer.

ARTICLE III—MARKET ADMINISTRATOR.

Section 1. *Designation, Removal, Bond and Liability.* The Market Administrator shall be designated, and shall be subject to removal at any time, by the Secretary. The Market Administrator, within forty-five (45) days following the date upon which he enters upon his duties, shall execute and deliver to the Secretary a bond in such amount as the Secretary may determine, with surety thereon satisfactory to the Secretary, conditioned upon the faithful performance of the duties of such Market Administrator. The Market Administrator shall not be held personally responsible in any way whatsoever to any licensee or to any other person for errors in judgment, mistakes of fact or other acts, either of commission or omission, except for acts of dishonesty, fraud or malfeasance in office.

Sec. 2. *Duties.* The Market Administrator shall:

1. Perform such duties as may be provided for him pursuant to this License and amendments thereto.

2. Keep such books and records as will clearly reflect the financial transactions provided for in this License, which books and records shall be subject to examination by the Secretary at any and all times.

3. Furnish such information and such verified reports as the Secretary may, from time to time, request.

4. Obtain a bond with reasonable security thereon for each employee who handles funds entrusted to the Market Administrator under the provisions of this License.

Sec. 3. *Rights.* The Market Administrator shall have the right:

1. To borrow money for the purpose of establishing an office with the necessary equipment and supplies, and for the purpose of meeting current operating expenses during not to exceed two delivery periods; which monies

shall be repaid from the funds retained by the Market Administrator to meet his cost of operation.

2. To incur necessary expenses, including compensation for persons employed by the Market Administrator for the proper conduct of his duties, and including the cost of procuring and continuing his bond.

3. To examine the books and records of the distributors and the books and records of the affiliates and subsidiaries of each distributor for the purpose of (1) verifying the reports and information furnished to the Market Administrator by each distributor pursuant to this License, and/or (2) obtaining the information from any distributor in the event such distributor fails to furnish reports or information as required by this License.

4. To check the sampling, weighing and butterfat tests of milk made by distributors, to determine the accuracy thereof, and for the purpose of assuring proper payments to producers. In the event of a discrepancy between the weights and tests determined by the Market Administrator, and the weights and tests determined by the distributors, settlement shall be made by distributors upon the basis of such weights and such butterfat tests as the Market Administrator may in each case decide.

5. And the power, upon the specific approval of the Secretary, to institute legal proceedings in his own name, as Market Administrator, and to take any other steps which may be necessary, to collect any and all monies which may become due and owing to him as such Market Administrator and to enforce such obligations as accrue to him as such Market Administrator under the terms and provisions of this License.

Sec. 4. *Compensation.* The Market Administrator shall be entitled to reasonable compensation, which shall be determined by the Secretary.

Article IV—Classification of Milk Sales and Uses

Section 1. *Primary Sales and Uses.* Milk purchased or handled by distributors shall be classified according to its sale and use as follows:

1. Class I milk means all milk sold or distributed by

distributors as whole milk for consumption or use in the Sales Area.

2. Class II milk means all milk used by distributors to produce cream for sale or distribution by distributors as cream for consumption or use in the Sales Area.

3. Class III milk means that quantity of milk or milk equivalent:

(a) used by distributors to produce ice cream, ice cream mix, condensed or evaporated milk.

(b) sold by distributors to produce ice cream or ice cream mix.

4. Class IV milk means the quantity of milk purchased, sold, used or distributed by distributors in excess of Class I, Class II and Class III milk.

Sec. 2. *Classification of Sales to Other Distributors.* Milk sold or distributed as milk or cream to another distributor, whether within or without the Sales Area, shall be accounted for by such selling distributor according to the class in which such milk or cream is sold or used by the purchasing distributor. Any distributor purchasing milk and/or cream from another distributor shall, on or before the date fixed for filing reports with the Market Administrator pursuant to article VI, furnish to the distributor from whom he purchased such milk and/or cream, an affidavit as to the quantity of milk and/or cream sold, used or distributed in each of the classes defined in section 1 of this article.

Sec. 3. *Sales Outside the Sales Area.* Milk sold or distributed by a distributor as milk or cream outside the Sales Area, shall be accounted for by such selling distributor as Class I and Class II milk, respectively: *Provided,* That if such selling distributor, on or before the date fixed for filing reports pursuant to article VI, shall furnish to the Market Administrator satisfactory proof that such milk or cream has been utilized for a purpose other than the sale or distribution for ultimate consumption or use as milk or cream, then, and in that event such milk or cream shall be classified in accordance with such other use.

Sec. 4. *Limitation as to Purchases from Producers with-*

out Bases. No distributor shall purchase milk or cream, for Class I or Class II purposes, produced by producers without bases, unless sufficient milk to meet all his Class I requirements, and sufficient milk or cream to meet his Class II requirements up to a quantity of milk or milk equivalent equal to 35 percent of his Class I milk, is not tendered by producers with bases or by distributors purchasing only from producers with bases.

ARTICLE V—PRICES TO DISTRIBUTORS AND CONDITIONS OF SALES

Section 1. *Prices.* Each distributor, except as hereinafter provided, shall be obligated to pay, in the manner hereinafter set forth in this License, the following prices for milk, of 3.5 percent butterfat content, which he has purchased from producers (including new producers), delivered f. o. b. distributor's country plant, platform, or loading station:

1. Class I milk—$2.00 per hundredweight.
2. Class II milk—For each one hundred pounds of milk—to the average price per pound of 92 score butter at wholesale in the Chicago market, as reported daily by the United States Department of Agriculture for the delivery period during which such milk is purchased, add 10 cents per pound, then multiply by 3.5.
3. Class III milk—For each one hundred pounds of milk—to the average price per pound of 92 score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased, add 8 cents per pound, then multiply by 3.5.
4. Class IV milk—For each one hundred pounds of milk—3.5 times the average price per pound of 92 score butter at wholesale in the Chicago market as

reported daily by the United States Department of Agriculture, for the delivery period during which such milk is purchased, to which amount shall be added 4 cents.

Sec. 2. *Adjustments in Cost of Milk to Distributors.* The prices set forth in section 1 of this article shall be subject to adjustment in accordance with the following:

1. If any producer has delivered milk to a distributor, at a country plant, platform, or loading station located more than 70 miles from the City Hall in Chicago, there shall be a deduction with respect to his Class I milk of 1 cent per hundredweight for each 10 miles or part thereof in excess of 70 miles, but not in excess of 100 miles from the City Hall in Chicago, and 1 cent per hundredweight for each 15 miles or part thereof in excess of 100 miles from the City Hall in Chicago.

2. Unless the prior written consent of the Market Administrator is obtained to compute the adjustments in the cost of milk to distributors made pursuant to this section, on some other basis, such adjustments shall be computed on the basis that to the extent necessary to supply each distributor with milk sold, distributed or used by him as Class I milk, the milk which was delivered to him at locations in or nearest to the Sales Area was sold, distributed or used by him as Class I milk.

3. On Class I, Class II and Class III milk sold, distributed or used outside of the Sales Area, there shall be an adjustment by (1) the amount of the difference between the Class I, Class II and Class III prices, respectively, specified in section 1, and such prices as the Market Administrator may determine to be the market prices in the market where such milk or cream is sold, distributed or used, and (2) the reasonable cost of transportation from the plant of origin of such milk or cream to such market.

Sec. 3. *Other Licenses for Milk.* If any milk is purchased from producers pursuant to the terms and conditions of this License and sold as milk or cream for ultimate consumption in another market with respect to which a License is in effect pursuant to section 8 (3) of

the Act covering such purchase from producers and such sales as milk or cream, then, and in that event the License in effect in the area in which such milk or cream is sold for ultimate consumption shall govern the prices and conditions of such sale.

Sec. 4. *Transactions with Violators.* No distributor shall purchase milk or cream from, or process or distribute milk or cream for, or sell milk or cream to any other distributor who he has notice is violating any provision of this License. Notice in writing from the Market Administrator shall be deemed to be sufficient notice.

Sec. 5. *Purchases by Distributors from Other Distributors.* No distributor shall sell milk or cream to or purchase milk or cream from another distributor for Class I or Class II purposes at less than the respective Class I or Class II prices specified in section 1, subject to adjustments as provided in section 2. If the selling distributor pasteurizes, bottles, or otherwise processes or transports such milk or cream as a service to the buying distributor, a reasonable charge or payment, as the case may be, shall be made therefor.

Sec. 6. *Prior Contracts.* Any contract or agreement entered into by a distributor prior to the effective date of this License, covering the purchase, delivery and/or sale of milk and its products, shall be deemed to be superseded by the terms and provisions of this License in so far as such contract or agreement is inconsistent with any provision of this License.

Article VI—Reports of Receipts and Sales of Milk by Distributors

Section 1. On or before the 7th day after the end of each delivery period, each distributor (other than those who operate only stores or similar establishments) shall report to the Market Administrator in a manner prescribed by the Market Administrator, with respect to milk or cream received by such distributor, during such delivery period, as follows:

1. The deliveries to each plant from producers supplying such distributor, the total quantity of milk represented by the delivered Class I percentage bases of all such

producers, the total quantity of milk represented by the delivered Class II percentage bases of all such producers, and the total quantity of milk represented by the excesses over the delivered Class I and Class II percentage bases of all such producers; and the deliveries of new producers supplying such distributor.

2. The total quantities of milk which were sold, used, or distributed by such distributor as Class I, Class II, Class III and Class IV milk, respectively, including sales to other distributors.

3. The deliveries of milk made to such distributor by any other distributor.

4. Upon first receiving milk from any producer (1) the name of such producer, (2) the date on which such milk was first received, and (3) whether or not such producer is a new producer.

5. Such other information as the Market Administrator may request for the purpose of performing the provisions of this License.

ARTICLE VII—DISTRIBUTORS NOT MARKETING WHOLE MILK

Section 1. *Distributors Not Marketing Whole Milk.* Any distributor who does not sell or distribute whole milk for ultimate consumption or use in the Sales Area, and who does not purchase milk from producers with bases:

1. Shall pay to producers the Class II price set forth in section 1 of article V for the milk purchased by him which is used to produce cream sold or distributed by him for ultimate consumption in the Sales Area;

2. Shall not be subject to the terms and provisions of articles VIII, IX, X, XII and XIII; but shall submit any or all reports pursuant to article VI upon the request of the Market Administrator.

ARTICLE VIII—DETERMINATION AND NOTIFICATION OF PRICES TO PRODUCERS

Section 1. *Computations.* With respect to each delivery period, the Market Administrator shall:

1. Compute the total value of the milk reported by each and all distributors pursuant to article VI on the

basis of the classification and prices with adjustments as set forth in articles IV and V, respectively, which computations shall not include the milk or the value thereof as purchased by distributors from other distributors, or if classified as emergency milk pursuant to section 3 of article IX.

2. Compute the total adjusted value of all the milk, the total value of which is computed in paragraph 1, by adding to such total value the adjustments to be made pursuant to section 5 of article IX.

3. Compute the total quantities of milk which represent, respectively, (1) the total of delivered Class I percentage bases, (2) the total of delivered Class II percentage bases and, (3) the total deliveries in excess of the delivered Class I and Class II percentage bases, all of which quantities are included in the computations made pursuant to paragraph 1.

4. Compute the value of the quantity of milk represented by the total Class I delivered percentage bases by multiplying such quantity of milk by the price specified for Class I milk in section 1 of article V.

5. Compute the value of the quantity of milk delivered in excess of the total delivered Class I and Class II percentage bases by multiplying such quantity of milk by the price specified for Class IV milk in section 1 of article V.

6. Compute the total value of the quantity of milk represented by the total delivered Class II percentage bases by subtracting from the amount obtained in paragraph 2 the amounts obtained in paragraphs 4 and 5.

7. Compute the blended price per hundredweight for the quantity of milk represented by the delivered Class II percentage bases by dividing the amount obtained in paragraph 6 by the quantity of milk represented by the total delivered Class II percentage bases, which blended price shall be subject to adjustments as set forth in section 2 of this article.

Sec. 2. *Adjustments for Reserves.* The Market Administrator may adjust the blended price, computed pursuant to section 1 of this article, for the purpose of establishing and maintaining a reserve fund against (1) the failure or delay of distributors to make payments on equaliza-

tion accounts pursuant to section 2 of article X, (2) errors and discrepancies in reports of distributors, and (3) errors and discrepancies in equalization accounts, including adjustments on delayed reports of distributors: *Provided*, That such adjustments in the blended price for any one delivery period may not, except upon the specific approval of the Secretary, exceed an amount equal to two (2) per cent of the total value of milk reported by distributors for such delivery period. Such reserve fund shall at no time contain a net amount in excess of ten (10) per cent of the value of the milk reported by distributors for an average delivery period and shall in no event be used by the Market Administrator to meet any costs or liabilities incurred by him under this License. If and when all or any portion of said reserve fund is not necessary to accomplish the purpose for which it was created, equitable distribution thereof shall be made by the Market Administrator to the producers supplying milk for distribution in the Sales Area.

Sec. 3. *Notification of Prices.* On or before the 12th day after the end of each delivery period, the Market Administrator shall notify all distributors, whose reports are included in the computations made pursuant to section 1 of this article, of the blended price computed pursuant to section 1 of this article, as adjusted pursuant to section 2 of this article, and of the Class II, Class III and Class IV prices as calculated by him pursuant to formulae set forth in section 1 of article V.

Article IX—Payments to Producers

Section 1. *Payments to Producers and New Producers.* Each distributor shall pay to producers (including new producers) on or before the 18th day after the end of each delivery period for milk delivered by such producers during such delivery period subject to adjustments as set forth in this article and deductions as set forth in article XII:

1. The Class I price for the quantity of milk delivered by each producer represented by such producer's delivered Class I percentage base.

2. The adjusted blended price, announced pursuant to

section 3 of article VIII, for the quantity of milk delivered by each producer represented by such producer's delivered Class II percentage base.

3. The Class IV price for the quantity of milk delivered by each producer in excess of such producer's delivered Class I and Class II percentage bases.

Sec. 2. *Additional Payments.* Any distributor may, with the prior approval of the Market Administrator, make payments to producers in addition to the payments pursuant to section 1 of this article: *Provided*, That such additional payments are made to all the producers supplying such distributor with milk of similar quality and grade. No distributor may accept services from, or render services to a producer or an association of producers from whom he is purchasing milk without making a reasonable payment or charge, as the case may be, for such services.

Sec. 3. *Emergency Milk.* During any emergency period when the normal supply of milk from producers is not sufficient to meet the Class I and Class II requirements of any distributor, such distributor may, with the prior approval of the Market Administrator, purchase milk for such emergency purposes from producers on terms and conditions other than those set forth in this article and in article XII, but at prices not less than the equivalent of the prices set forth in article V, in which event such milk shall not be included in the computations as provided in article VIII, but shall be reported separately to the Market Administrator by such distributor.

Sec. 4. *Butterfat Differentials.* Each distributor shall pay an amount per hundredweight of milk for each 1/10th of one percent butterfat content above, and shall deduct a similar amount for each 1/10th of one percent butterfat content below 3.5 percent butterfat on all milk on which prices are paid producers pursuant to sections 1 and 2 of this article, as follows:

1. On delivered Class I and Class II percentage bases, four (4) cents per hundredweight; and,

2. On all milk delivered in excess of delivered Class I and Class II percentage bases, an amount per hundredweight equal to 1/10th of the average price per pound of

92 score butter at wholesale in the Chicago market as reported by the United States Department of Agriculture for the delivery period during which such milk is purchased.

Sec. 5. *Location Adjustments in Payments to Producers.* With respect to the delivered Class I percentage base of any producer who has delivered milk to a distributor at a country plant, platform or loading station located more than 70 miles from the City Hall in Chicago, each distributor shall deduct from payments to producers to be made pursuant to section 1 of this article, one (1) cent per hundredweight for each ten (10) miles or part thereof in excess of seventy (70) miles, but not in excess of one hundred (100) miles from the City Hall in Chicago; and one (1) cent per hundredweight for each fifteen (15) miles or part thereof in excess of one hundred (100) miles from the City Hall in Chicago.

Sec. 6. *Distributors' Reports of Payments.* On or before the 20th day after the end of each delivery period, each distributor shall report for such delivery period to the Market Administrator, in a manner prescribed by him, with respect to each producer: (1) his name, (2) his total deliveries of milk as delivered Class I percentage base, delivered Class II percentage base, and excess, respectively, (3) the average butterfat content of milk delivered, (4) the total payment made to such producer, showing all adjustments, additions and deductions, and (5) such other similar information as the Market Administrator shall request.

Article X—Equalization Among Distributors as to Payments to Producers

Section 1. *Equalization Accounts.* The Market Administrator shall maintain for each distributor whose reports are included in the computations made pursuant to article VIII, records and accounts which shall accurately disclose for each distributor (1) a debit of the total value of milk as computed for each distributor pursuant to paragraph 1, section 1 of article VIII, (2) a credit of the total payments to be made by such distributor pursuant to section 1 of article IX, after giving effect to the adjustments pursuant to section 5 of article IX, and (3) the pay-

ments to be made by such distributor to the Market Administrator and payments to be made by the Market Administrator to such distributor.

Sec. 2. *Statement to Distributors and Payment of Balances.* On or before the 14th day after the end of each delivery period the Market Administrator shall render a statement to each distributor whose reports are included in the computations made pursuant to article VIII, showing the debit or credit balance, as the case may be, in the equalization account of such distributor with respect to milk purchased, sold or used during such delivery period. Debit balances shall be paid to the Market Administrator on or before the 16th day after the end of such delivery period. Any funds so paid to the Market Administrator shall, as soon as reasonably possible be paid out by him pro rata among the distributors having credit balances in proportion to, but only to the extent of, each such credit balance.

Article XI—Producers and Producers' Cooperative Associations

Section 1. *Payments by Cooperatives.* No provision in this License shall be construed as controlling or restricting any producers' cooperative association which meets the requirements of the Capper-Volstead Act and is licensed as a distributor under this License, with respect to the actual deductions or charges, dividends or premiums to be made by such association from and/or to its members: *Provided,* That no such deductions or charges may be made by any such producers' cooperative association from any of its members, to meet a current operating loss incurred by such producers' cooperative association in its processing or distribution operations unless (a) expressly and specifically authorized by any such member to make such deductions or charges for such purpose, and (b) the producers' cooperative association notifies the Market Administrator of the same.

Sec. 2. *Transportation Rights.* Producers shall have the right to deliver milk to plants or platforms of distributors, using any reasonable method of transportation which they, in their discretion, may select. No distributor shall interfere with or discriminate against producers in

the exercise of such right. At the request of the Market Administrator, each distributor shall from time to time, submit a verified report stating the actual transportation charges on all milk delivered to him f. o. b. any and all plants, for the purpose of permitting the Market Administrator to review such transportation charges and to determine the reasonableness thereof.

ARTICLE XII—DEDUCTIONS FROM PAYMENTS TO PRODUCERS

Section 1. *For Market Administration.* Each distributor shall deduct one (1) cent per hundredweight from the payments to be made by him pursuant to article IX in regard to all milk delivered to him during each delivery period by producers and shall on or before the 18th day after the end of each such delivery period, pay such deduction to the Market Administrator.

Sec. 2. *For Marketing Services.* Upon the request of the Market Administrator each distributor shall, in addition, deduct three (3) cents per hundredweight from the payments to be made by such distributor pursuant to article IX in regard to all milk delivered to him during each delivery period by producers (1) for whom the following services are not currently rendered in a satisfactory manner by a producers' cooperative association: (a) market information, (b) supervision over weights and tests, and (c) to the extent that funds permit, the establishment and maintenance of a reserve fund for the protection against the failure of distributors to make payments for milk purchased; and (2) from whom a substantially similar charge or deduction is not being paid by distributors to a producers' cooperative association for such purposes. Such deductions shall be paid to the Market Administrator on or before the 18th day after the end of each delivery period and shall be expended by him for the purpose of securing services similar to those above named for producers from whose payments such deductions are made except that with the approval of the Secretary, the Market Administrator may notify any producer when the distributor to whom such producer is selling milk is in violation of any of the terms and provisions of this License, and no producer shall be entitled to protection against the failure of such dis-

tributor to make payments for milk purchased from such producer thereafter and until otherwise notified by the Market Administrator. All deductions made pursuant to this section shall be kept in a separate account by the Market Administrator and shall in no event be used by him to meet any costs or liabilities incurred by him under this License, except as provided in this section.

Sec. 3. *Agents of Market Administrator.* The Market Administrator may, in his discretion, employ the facilities and services of any agent or agents for the purpose of securing to producers the aforementioned benefits, if such benefits may be efficiently and economically secured thereby. The Market Administrator shall pay over such funds to such agent or agents, if he determines to do so, only upon the consent of such agent or agents to (1) keep its or their books and records in a manner satisfactory to the Market Administrator; (2) permit the Market Administrator to examine its or their books and records; and to furnish the Market Administrator such verified reports or other information as the Market Administrator may from time to time request; and (3) disburse such funds in the manner above provided.

Sec. 4. *Waiver of Deductions.* The Market Administrator, in his discretion, may at any time waive the foregoing deductions or distribute any balance arising from such deductions, or any part thereof, for any delivery period (in which event the deductions so waived shall not be made by the distributors from payments to producers); the distribution of any such balances shall be equitable (1) among all producers with respect to the amounts paid to the Market Administrator pursuant to section 1 of this article, and (2) among all producers from whom such deductions have been made pursuant to section 2 of this article.

ARTICLE XIII—DISTRIBUTOR'S FINANCIAL RESPONSIBILITY

Section 1. *Bond.* Each distributor who purchases milk from producers and sells any part of such milk for distribution as whole milk for consumption in the Sales Area shall, within thirty days after the receipt of a notice to that effect from the Market Administrator, furnish to the Market Administrator a bond with good and sufficient

surety thereon, satisfactory to the Market Administrator (in an amount not in excess of the purchase value of the milk purchased by such distributor during any two successive delivery periods as designated by the Market Administrator) for the purpose of securing the fulfillment of such distributor's obligations as provided in this License. Any distributor who commences to do business after the effective date of this License, shall, as a condition precedent to engaging in such business, furnish to the Market Administrator a bond in conformity with the foregoing provision.

Sec. 2. *Waiver of Bond.* The Market Administrator may (1) if satisfied from the investigation of the financial condition of a distributor that such distributor is solvent and/or possessed of sufficient assets to fulfill his said obligations, or (2) if, pursuant to a State statute, a distributor has furnished a bond with good and sufficient surety thereon in conformity with the foregoing provision, waive the requirement of such bond as to such distributor. Such distributor may, upon a change in such circumstances, be required by the Market Administrator to comply with the foregoing requirement.

Sec. 3. *Periodic Deposits.* Each distributor who is unable to meet the requirements of the foregoing provisions, shall make periodic deposits with the Market Administrator at such times, in such amounts, and in such manner as the Market Administrator may determine to be necessary in order to secure the fulfillment of such distributor's obligations as provided in this License.

Article XIV—Milk Industry Board

Section 1. *Establishment.* The Secretary may, in his discretion, at any time establish a Milk Industry Board, which shall have representation of producers, distributors, and the public. In establishing the Milk Industry Board, the Secretary will give due consideration to the recommendations and nominations by various groups of producers, distributors and the consuming public.

Sec. 2. *Duties and Powers.* The Milk Industry Board shall have such duties and powers as the Secretary may, from time to time, delegate to it, in order to effectuate the provisions and purposes of this License.

Sec. 3. *Expenses.* The Secretary may further, in his discretion, authorize and direct the Market Administrator to pay over to the Milk Industry Board for the purpose of meeting its general expenses, a portion of the monies paid to the Market Administrator for his cost of operation: *Provided*, That such portion shall in no event exceed ¼ cent per hundred pounds of milk for which such payment is made.

Article XV—General Provisions

Section 1. *Books and Records.* The distributors and their respective affiliates and subsidiaries shall severally keep books and records which will clearly reflect all the financial transactions of their respective businesses and the financial condition thereof.

Sec. 2. *Reports.* The distributors shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he may request, in a manner prescribed by him and/or in accordance with forms of reports to be supplied by him, for the purposes of (1) assisting the Secretary in the furtherance of his powers and duties with respect to this License and/or (2) enabling the Secretary to ascertain and determine the extent to which the declared policy of the Act and the purpose of this License are being effectuated; such reports to be verified under oath. The Secretary's determination as to the necessity of and the justification for the making of any such reports, and the information called for thereby, shall be final and conclusive.

Sec. 3. *Examination of Books and Records.* For the same purposes as set forth in section 2 of this article and/or to enable the Secretary to verify information furnished him, all the books and records of each distributor and the books and records of the affiliates and subsidiaries of each distributor, shall, during the usual hours of business, be subject to examination by the Secretary. The Secretary's determination as to the necessity of and the justification for any such examination shall be final and conclusive.

Sec. 4. *Confidential Information.* To the extent not otherwise expressly provided by this License, all informa-

tion in the possession of the Secretary, the Market Administrator, their agents, or any official, which relates to the business or property of any person and which was furnished by or obtained from such person pursuant to the requirements of this License, shall be kept confidential in accordance with the applicable General Regulations of the Agricultural Adjustment Administration.

Sec. 5. *Agents.* The Secretary may by designation in writing, name any person or persons, including officers or employees of the Government, or Bureaus or Divisions of the Department of Agriculture, to act as his agents or agencies in connection with any of the provisions of this License, and he may authorize any such agent or agency to designate or appoint persons, including officers or employees of the Department of Agriculture, to exercise or perform any or all of the powers and functions delegated to them as may be deemed necessary or advisable to accomplish the proper execution or performance of such powers and functions.

Sec. 6. *Separability.* If the applicability of any provision of this License to any person, circumstance or thing is held invalid, the applicability thereof to any other person, circumstance or thing, shall not be affected thereby. If any provision of this License is declared invalid, the validity of the remainder of this License shall not be affected thereby.

Sec. 7. *Derogation.* Nothing contained in this License is or shall be construed to be in derogation or modification of the rights of the Secretary, or of the United States (1) to exercise any powers granted by the Act or otherwise, and/or (2) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

Sec. 8. *Termination.* In the event this License is terminated or amended by the Secretary, any and all obligations which shall have arisen, or which may thereafter arise in connection therewith, by virtue of or pursuant to this License, and any violations of this License which may have occurred prior to such termination or amendment, shall be deemed not to be affected, waived or terminated by reason thereof, unless so expressly provided in the notice of termination of, or the amendment to this License.

Sec. 9. *Period of Notice.* The Secretary hereby determines that an emergency exists which requires a shorter period of notice than three days, and that the period of notice, with respect to the issuance of this License, which is hereinafter provided, is reasonable under the circumstances.

IN WITNESS WHEREOF, H. A. Wallace, Secretary of Agriculture, acting under the provisions of the Agricultural Adjustment Act, as amended, and pursuant to the applicable General Regulations of the Agricultural Adjustment Administration, does hereby execute in duplicate and issue this Amended License in the City of Washington, District of Columbia, on this 1st day of Dec., 1934, and pursuant to the provisions hereof, declares this License to be effective on and after 12:01 a. m., eastern standard time, Dec. 2, 1934.

H. A. WALLACE,
Secretary of Agriculture.

EXHIBIT A

ALLOTMENT AND REGULATION OF BASES

Section 1. *Allotment of Bases.* For the purposes of this License, each producer shall be allotted a base as follows:

1. In the case of producers (excepting new producers) who are members of the Pure Milk Association, hereinafter called the "Association", the bases recorded in the files and records of the Association shall be the bases of such producers. The Market Administrator shall have access to such files and records.

2. In the case of producers who are not members of the Association, bases shall be allotted by the Market Administrator, which bases shall be equitable as compared with the bases of producers who are members of the Association.

3. In the case of producers who have been delivering milk in the Sales Area prior to 90 days before the effective date of this License, but for whom bases have not already been allotted pursuant to paragraphs 1 and 2,

bases shall be allotted by the Market Administrator equal to 90 per cent of such producer's average deliveries of milk during the first three months, excepting May and June, for which records of such producer's deliveries are requested by and reported to the Market Administrator.

4. In the case of each new producer, a base shall be allotted by the Market Administrator which shall be equal to 80 per cent of the total delivery of milk by such new producer for each of the first three months, excepting May and June, during which such new producer delivers milk to distributors. For any part of May or June falling within such three months the base for each new producer shall be equal to 60 per cent of his total delivery of milk. After such new producer has delivered milk to distributors for three months, he shall be allotted a base by the Market Administrator equal to the average of his base during such three months.

Sec. 2. *Revision of Bases.* The Market Administrator may make such revisions in the bases of producers who are not members of the Pure Milk Association as he may, from time to time, deem necessary or advisable, to the end that such bases may be equitable as among producers.

Sec. 3. *Reports by Distributors.* Upon the request of the Market Administrator, each distributor, who has not already submitted reports containing the information required in this paragraph, shall, within ten days after receiving such request, submit to the Market Administrator written reports, verified under oath, containing the following information with respect to each producer, who has delivered milk to such distributor; for each calendar month during the years 1933 and 1934 or such portion thereof as the producer may have delivered milk, (1) the total pounds of delivered milk, (2) the number of days in each month upon which deliveries were made.

Sec. 4. *Announcement of Bases.* When bases are established for producers pursuant to paragraphs 2, 3, and 4 of section 1, or revised pursuant to section 2 of this exhibit, the Market Administrator shall notify each distributor of the bases of such producers who are delivering milk to each such distributor.

Sec. 5. *Tenure and Transfer of Bases.* The following

rules shall govern the tenure and transfer by producers of all bases allotted pursuant to this exhibit:

1. Any producer who voluntarily ceases to market milk pursuant to the terms and provisions of this License for a period of more than forty-five (45) consecutive days shall forfeit his base.

2. Because of the lack of feed resulting from the severe drought in the Chicago production area, any producer may upon notice to the Market Administrator, discontinue the deliveries of milk to distributors in the Sales Area at any time after the effective date of this License and retain his base notwithstanding the provision in paragraph 1, provided that such producer's base be not transferred to another person, and that he resumes such deliveries on or before June 1, 1935.

3. A base may be transferred to another person upon the sale and transfer of the producer's entire herd to such person: *Provided, however,* That such base so transferred shall be forfeited unless the entire herd is maintained for six months consecutively after such sale and transfer. Such transfer shall be reported to the Market Administrator.

4. A producer with a base, whether landlord or tenant, may retain his base when moving his entire herd from one farm to another farm.

5. A landlord who rents on shares is entitled to the entire base to the exclusion of the tenant, if the landlord owns the entire herd. Likewise, the tenant who rents on shares is entitled to the entire base to the exclusion of the landlord if the tenant owns the entire herd. If the cattle are jointly owned by tenant and landlord, the base shall be divided between the joint owners according to the ownership of the cattle if and when such joint owners terminate the tenant-landlord relationship.

Docket No. 1-C
License No. 30

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION

LICENSE SERIES—LICENSE No. 30

AMENDMENT TO AMENDED LICENSE FOR MILK

CHICAGO, ILLINOIS, SALES AREA.

Issued by the Secretary of Agriculture, January 16, 1935. Effective date January 17, 1935 (12:01 a. m., eastern standard time).

AMENDMENT TO AMENDED LICENSE FOR MILK

CHICAGO, ILLINOIS, SALES AREA

WHEREAS, H. A. Wallace, Secretary of Agriculture, acting under the provisions of the Agricultural Adjustment Act, as amended, for the purposes and within the limitations therein contained, and pursuant to the regulations issued thereunder, has, on the 3rd day of February, 1934, issued a License for Milk—Chicago Sales Area, which License was subsequently amended on May 31, June 30, July 17, August 21, October 30, and December 1, 1934; and

WHEREAS, the undersigned finds that it is necessary to issue the following Amendment to the said License for Milk—Chicago, Illinois, Sales Area, pursuant to section 8 (3) of the Agricultural Adjustment Act, and applicable General Regulations of the Agricultural Adjustment Administration; and

WHEREAS, the undersigned finds that the said License and this Amendment are in accordance with the provisions of section 8 (3) of the said Act and tend to effectuate the declared policy set forth in section 2 of said Act, in that the terms and conditions thereof

(a) will tend to establish and maintain such balance between the production and consumption of milk and/or products thereof, and such marketing conditions therefor, as will tend to reestablish prices to farmers producing said commodities at a level that will give such commodity and/or products thereof a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of such commodity and/or products thereof in the base period, August 1909-July 1914;

(b) will tend to approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic markets;

(c) will protect the consumers' interest by tending to readjust the farm production of said commodities at such level as will not increase the percentage of the consumers' retail expenditure for said commodity and/or products thereof, which is returned to the farmer, above the percentage which was returned to the farmer in the pre-war period, August 1909-July 1914; and

(d) are necessary to eliminate unfair practices and charges which would prevent or tend to prevent the effectuation of the said declared policy and the restoration of normal economic conditions in the marketing of the said commodity and/or products thereof, and the financing thereof.

WHEREAS, the undersigned finds that the subject matter of this Amendment is embraced within the scope of a hearing heretofore held on a Marketing Agreement pursuant to applicable General Regulations of the Agricultural Adjustment Administration:

NOW, THEREFORE, the undersigned, acting under the authority vested in the Secretary of Agriculture under the provisions of the Agricultural Adjustment Act, as amended, hereby amends and modifies the terms and conditions of the said License, as amended, (hereinafter called the "License"), as follows:

1. That paragraph 5, section 3 of article III, of the

License, which appears below, be deleted from the License:

"5. And the power, upon the specific approval of the Secretary, to institute legal proceedings in his own name, as Market Administrator, and to take any other steps which may be necessary to collect any and all monies which may become due and owing to him as such Market Administrator and to enforce such obligations as accrue to him as such Market Administrator under the terms and provisions of this License."

2. That the following be substituted as paragraph 5, section 3 of article III, of the License:

"5. To publicly disclose, with the consent of the Secretary, (a) the names of persons who are in violation of this License, and (b) the nature of such violations."

3. That the following be added as paragraph 6, section 3 of article III of the License:

"6. And the power, upon the specific approval of the Secretary, (a) to institute legal proceedings in his own name, as Market Administrator; (b) to take any other steps which may be necessary to collect any and all monies which may become due and owing to him as such Market Administrator; (c) to enforce such obligations as accrue to him as such Market Administrator under the terms and provisions of this License; and (d) to settle and compromise all such obligations."

4. That section 4 of article IV of the License, which appears below, be deleted from the License:

"Sec. 4. *Limitation as to Purchases from Producers without Bases.* No distributor shall purchase milk or cream, for Class I or Class II purposes, produced by producers without bases, unless sufficient milk to meet all his Class I requirements, and sufficient milk or cream to meet his Class II requirements up to a quantity of milk or milk equivalent equal to 35 percent of his Class I milk, is not tendered by producers with bases or by distributors purchasing only from producers with bases."

5. That the following be substituted as section 4 of article IV of the License:

"Sec. 4. *Limitation as to Purchases from Producers without Bases.* No distributor shall purchase milk or cream, for Class I or Class II purposes, produced by producers without bases, unless sufficient milk to meet all his Class I requirements, and sufficient milk or cream to meet his Class II requirements up to a quantity of milk or milk equivalent equal to 25 percent of his Class I milk, is not tendered by producers with bases or by distributors purchasing only from producers with bases."

6. That paragraph 1, section 1 of article V of the License, which appears below, be deleted from the License:

"1. Class I milk—$2.00 per hundredweight."

7. That the following be substituted as paragraph 1, section 1 of article V of the License:

"1. Class I milk—$2.20 per hundredweight."

8. That section 2 of article XIV of the License, which appears below, be deleted from the License:

"Sec. 2. *Duties and Powers.* The Milk Industry Board shall have such duties and powers as the Secretary may, from time to time, delegate to it, in order to effectuate the provisions and purposes of this License."

9. That the following be substituted as section 2 of article XIV of the License:

"Sec. 2. *Duties and Powers.* The Milk Industry Board shall have such duties and powers as the Secretary may, from time to time, delegate to it, in order to effectuate the provisions and purposes of this License, and to recommend to the Secretary that obligations arising under the terms and provisions of this License, and due and owing to the Market Administrator, be settled and compromised."

10. This Amendment to the License shall become effective at such time as the Secretary may declare above his signature attached hereto.

11. The provisions of the License, except as amended by this Amendment, shall continue to be in full force and effect.

12. Nothing herein contained shall release or otherwise affect the liability of any licensee in respect to any violation by him prior to the effective date of this Amendment to the License.

13. The undersigned hereby determines that an emergency exists which requires a shorter period of notice than three days, and that the period of notice, with respect to the issuance of this Amendment to the License, which is hereinafter provided, is reasonable under the circumstances.

IN WITNESS WHEREOF, H. A. Wallace, Secretary of Agriculture, acting under the provisions of the Agricultural Adjustment Act, as amended, and pursuant to the applicable General Regulations of the Agricultural Adjustment Administration, does hereby execute in duplicate and issue this Amendment to the License for Milk, Chicago Sales Area, in the City of Washington, District of Columbia, on this 16th day of January, 1935, and pursuant to the provisions hereof, declares this Amendment to be effective on and after 12:01 a. m., eastern standard time, January 17, 1935.

H. A. WALLACE,
Secretary of Agriculture.